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Public Prosecutor v Ahmad Zahid bin Hamidi

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HIGH COURT (SHAH ALAM) — CRIMINAL TRIAL NO BA-(45–53)–12 OF 2019
MOHD YAZID J
23 SEPTEMBER 2022

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Criminal Law — Offence — Accepting gratification — Accused charged under s 16(a)(B) of Malaysian Anti-Corruption Commission Act 2009 with alternative charges under s 165 of Penal Code — Whether prosecution made out prima facie case against accused — Whether elements of offence had been established — Whether charges framed were defective

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The accused, a former Deputy Prime Minister cum Minister of Home Affairs was facing 33 charges under s 16(a)(B) of the Malaysian Anti-Corruption Commission Act 2009 ('MACC Act') for 33 offences of corruptly receiving gratification from a company called Ultra Kinara Sdn Bhd ('UKSB') with 33 alternative charges under s 165 of the Penal Code ('the PC') for 33 offences in the accused's capacity as a public servant for receiving a valuable thing without consideration. In addition, the accused had also been charged with seven alternative charges under s 165 of the PC. All offences were said to have been committed in two locations, ie either the private residence of the accused at Country Heights Kajang, Selangor ('Country Heights residence') or the official residence of the Deputy Prime Minister at Seri Satria in Presint 16, Putrajaya ('Seri Satria residence'). Based on the 33 main and alternative charges, the accused was said to have corruptly received a sum of SGD200,000 beginning the month of October 2014 until February 2015, SGD300,000 beginning the month of March 2015 until May 2017 and finally beginning June 2017 until March 2018 for a sum of SGD520,000 received by the accused. Based on the seven alternative charges, the accused was said to have received a total amount of SGD4,240,000 on 28 March 2017, 4 May 2017, September 2017, November 2017, 10 January 2018, 12 February 2018 and 2 March 2018 all at the Seri Satria residence. Based on the charges framed, all of the monies stated in the 33 main charges under s 16(a)(B) of the MACC Act related to the contract which was awarded by the Ministry of Home Affairs ('MOHA') to UKSB. The said gratification was said to have been delivered and received by the accused every month beginning October 2014 until March 2018. For the seven alternative charges under s 165 of the PC, the accused was alleged to have received monies without consideration from UKSB which had official dealings with the MOHA. The defence contended that the evidence of the prosecution witnesses ie PW15, PW16 and PW17 and the ledger revealed that certain serving and former Cabinet ministers as well as serving and retired

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government servants had received monies from UKSB but they were not prosecuted in court. And because of this it was contended that the accused was selectively prosecuted. It was also contended that the prosecution had failed to act fairly and violated the accused's constitutional rights under arts 5 and 8 of the Federal Constitution. Secondly, it was argued that the receipt of a political donation was not an offence in law.

Held, acquitting and discharging the accused:

(1) The defence had only met the first requirement by suggesting that the accused only received two political donations of RM100,000 each on two occasions amounting to RM200,000 in total. The defence had however failed to lead evidence to suggest that the political donation of RM200,000 received was in fact spent for political purposes. Therefore, political donation was not a defence for the accused and not applicable in the context of the case (see para 56).

(2) The defence of the accused was led by a very well known and experienced criminal defence counsel with the assistance of two other prominent criminal defence counsel. The issue of incompetency of the defence counsel did not arise at all. Thus, there was no violation of the accused's constitutional rights under arts 5 and 8 of the Federal Constitution. Article 145 of the Federal Constitution was clear in that the learned public prosecutor was fully empowered to institute prosecution based on the outcome of an investigation carried out by an authority. The issues of unfair trial and selective prosecution did not arise at all in the present case. Thus, the arguments of unfair trial and selective prosecution was rejected as they were devoid of merit (see paras 62–64).

(3) The remark column of the ledger was important as it kept record of the recipients of the monies. In other words, who actually received the money would be recorded in the 'remark' columns of the ledger. PW17 on one hand testified that he would record the payments on the same day or the next day of payment, however it had been shown that most of the 'remark' columns in the ledger were left blank. PW15 further agreed that the blank 'remark' columns did not show that the monies were paid to the accused. Without strong evidential support, the court simply could not consciously make a finding that the monies were in fact received by the accused as suggested by the prosecution based on transactions recorded in the ledger with no record that the monies were in fact received by the accused in the 'remark' columns (see paras 138 & 151).

(4) The prosecution witnesses did not provide an in-detail explanation on the identity of one Nicole Tan ('Nicole'). Nicole was instrumental to explain the nature of arrangement or agreement between UKSB and herself or the Hong Kong subcontractor as she was the one providing most of the funds from the RM238,356,966.60 in total as specified in the

ledger. The witnesses from Hong Kong including Nicole would be able to provide an explanation on the actual source of funds especially given that PW15, PW16 and PW17 confirmed that the source of the monies paid to the accused did not originate from UKSB. In short, the source of fund was not explained (see paras 147–148).

(5) The evidence of PW15 revealed that he made 40 deliveries of cash monies to the accused. PW16 however said he made deliveries on a few occasions whereas PW17 said he delivered on two other occasions. Therefore, it would mean there were more than 42 deliveries, thus being in clear contradiction with the evidence of PW15 and the charges preferred that there were only 42 transactions ie 42 deliveries. PW16 also had a close relationship with the family members of the accused and it was therefore not unreasonable to find that PW16 who was very close to the accused would have made more deliveries compared to PW15. Furthermore, the prosecution did not produce any sample envelope. No evidence was led to show the size of the envelope used. PW17, the creator of the ledger admitted during cross examination that the second delivery of RM3m in cash by way of a luggage was an afterthought. This admission of afterthought by the key prosecution witness ie PW17 was more than sufficient to find that PW17 was with zero credibility. Additionally, no CCTV footages were produced in court and the drivers, guards and policemen were not called. The Touch n Go transaction slips, the phone call logs and messages with the accused were also not produced (see para 151).

(6) The three key witnesses called by the prosecution ie PW15, PW16 and PW17 were not reliable and neither were they trustworthy or credible. The prosecution had failed to prove the main ingredient of the offence under all 33 main charges that the accused had received gratification in the context of s 16(a)(B) of the MACC Act as specified in the charges. In respect of the 33 alternative charges under s 165 of the PC, except the part where the accused was a public servant which was not disputed by the defence, the prosecution had failed to prove the main ingredient of the offence ie receipt of monies without consideration (see paras 153–155).

(7) In relation to the seven alternative charges under s 165 of the PC which involved one-off payments to the accused, the evidence of PW15, PW16 and PW17 and the ledger failed to prove the element of receipt of cash monies by the accused. The same reasons applied to the seven alternative charges under s 165 of the PC and the two additional amended charges (see para 156).

(8) On the ground that the prosecution had failed to prove the element of receipt for offences under s 16(a)(B) of the MACC Act as well as s 165 of

the PC, therefore the statutory presumption under s 50(1) and (3) of the MACC Act were not applicable and could not be invoked in law and fact against the accused (see para 157).

(9) Upon production of the audited accounts by the defence for the financial period of 2014 until 2018, the three key prosecution witnesses ie PW15, PW16 and PW17 altered their evidence. In their written witness statements they said that the monies given to the accused were from UKSB. However, they later changed their evidence by saying that the monies given to the accused were from UKSB's partner in Hong Kong. In all the charges preferred against the accused, there was no mention of the representative of UKSB who had given the monies to the accused. Section 153 of the Criminal Procedure Code required the prosecution to provide the particulars as to the identity of the persons who delivered the monies to the accused in all the charges. There were unsolved and unanswered doubts as to whether the monies ever existed and who delivered the monies to the accused. The particulars of the persons who made the deliveries of the cash monies ought to be specified in all charges to give the accused sufficient notice of the offence alleged as per the charges. The absence of such important details as to whom delivered the cash monies to the accused amounted to a serious prejudice of the accused's rights in preparation of his defence. Thus, the absence of such particulars was fatal and rendered the charges against the accused defective (see paras 159–163).

(10) PW17 was the maker of the ledger. Since the evidence of the key prosecution witnesses, PW15, PW16 and PW17 were not credible, not trustworthy, not believable and not reliable whom based their evidence heavily on the ledger, therefore there should be no weightage given to the ledger (see para 165).

[Bahasa Malaysia summary

Tertuduh, bekas Timbalan Perdana Menteri merangkap Menteri Dalam Negeri menghadapi 33 pertuduhan di bawah s 16(a)(B) Akta Suruhanjaya Pencegahan Rasuah Malaysia 2009 ('Akta SPRM') atas 33 kesalahan secara rasuah menerima suapan daripada satu syarikat bernama Ultra Kinara Sdn Bhd ('UKSB') dengan 33 pertuduhan alternatif di bawah s 165 Kanun Keseksaan ('KK') bagi 33 kesalahan dalam kapasiti tertuduh sebagai penjawat awam kerana menerima benda yang berharga tanpa balasan. Selain itu, tertuduh juga telah didakwa dengan tujuh pertuduhan alternatif di bawah s 165 KK. Kesemua kesalahan dikatakan dilakukan di dua lokasi iaitu sama ada kediaman persendirian tertuduh di Country Heights Kajang, Selangor ('kediaman Country Heights') atau kediaman rasmi Timbalan Perdana Menteri di Seri Satria di Presint 16, Putrajaya ('kediaman Seri Satria'). Berdasarkan 33 pertuduhan utama dan alternatif, tertuduh dikatakan menerima rasuah sebanyak SGD200,000 bermula bulan Oktober 2014 hingga Februari 2015,

SGD300,000 bermula bulan Mac 2015 hingga Mei 2017 dan akhirnya bermula Jun 2017 sehingga Mac 2018 dengan jumlah SGD520,000 diterima tertuduh. Berdasarkan tujuh pertuduhan alternatif, tertuduh dikatakan menerima jumlah keseluruhan SGD4,240,000 pada 28 Mac 2017, 4 Mei 2017, September 2017, November 2017, 10 Januari 2018, 12 Februari 2018 dan 2 Mac 2018 semuanya di kediaman Seri Satria. Berdasarkan pertuduhan yang dirangka, kesemua wang yang dinyatakan dalam 33 pertuduhan utama di bawah s 16(a)(B) Akta SPRM berkaitan kontrak yang telah dianugerahkan oleh Kementerian Dalam Negeri ('KDN') kepada UKSB. Suapan tersebut dikatakan telah dihantar dan diterima oleh tertuduh setiap bulan bermula Oktober 2014 hingga Mac 2018. Bagi tujuh pertuduhan alternatif di bawah s 165 KK, tertuduh didakwa menerima wang tanpa pertimbangan daripada UKSB yang mempunyai urusan rasmi dengan KDN. Pihak pembelaan berhujah bahawa keterangan saksi pendakwaan iaitu PW15, PW16 dan PW17 dan lejar mendedahkan beberapa menteri yang sedang berkhidmat dan bekas Kabinet serta penjawat kerajaan yang sedang berkhidmat dan bersara telah menerima wang daripada UKSB tetapi mereka tidak didakwa di mahkamah. Dan kerana ini dikatakan bahawa tertuduh telah didakwa secara terpilih. Turut dipertikaikan bahawa pihak pendakwaan gagal bertindak adil dan melanggar hak perlembagaan tertuduh di bawah perkara 5 dan 8 Perlembagaan Persekutuan. Kedua, dihujahkan bahawa penerimaan derma politik bukanlah satu kesalahan di sisi undang-undang.

Diputuskan, membebaskan dan melepaskan tertuduh:

(1) Pihak pembelaan hanya memenuhi syarat pertama dengan mencadangkan tertuduh hanya menerima dua derma politik sebanyak RM100,000 setiap satu pada dua kali berjumlah RM200,000 kesemuanya. Pihak pembelaan bagaimanapun gagal mengemukakan bukti yang menunjukkan bahawa derma politik RM200,000 yang diterima sebenarnya dibelanjakan untuk tujuan politik. Oleh itu, derma politik bukanlah pembelaan bagi tertuduh dan tidak terpakai dalam konteks kes (lihat perenggan 56).

(2) Pembelaan tertuduh diketuai oleh seorang peguam bela jenayah yang sangat terkenal dan berpengalaman dengan dibantu oleh dua lagi peguam bela jenayah terkemuka. Isu ketidakcekapan peguam bela tidak timbul langsung. Oleh itu, tiada pelanggaran hak perlembagaan tertuduh di bawah perkara 5 dan 8 Perlembagaan Persekutuan. Perkara 145 Perlembagaan Persekutuan jelas menunjukkan bahawa pendakwa raya yang bijaksana diberi kuasa sepenuhnya untuk memulakan pendakwaan berdasarkan hasil siasatan yang dijalankan oleh pihak berkuasa. Isu perbicaraan tidak adil dan pendakwaan terpilih tidak timbul sama sekali dalam kes ini. Oleh itu, hujahan perbicaraan tidak adil dan pendakwaan terpilih telah ditolak kerana ia tidak mempunyai merit (lihat perenggan 62–64).

(3) Ruangan catatan lejar adalah penting kerana ia menyimpan rekod penerima wang. Dalam erti kata lain, siapa sebenarnya yang menerima wang tersebut akan direkodkan dalam ruangan 'remark' lejar. PW17 di satu masa memberi keterangan bahawa dia akan merekodkan pembayaran pada hari yang sama atau hari berikutnya pembayaran, namun telah ditunjukkan bahawa kebanyakan ruangan 'remark' dalam lejar dibiarkan kosong. PW15 seterusnya bersetuju bahawa ruangan 'remark' kosong tidak menunjukkan wang tersebut telah dibayar kepada tertuduh. Tanpa sokongan keterangan yang kukuh, mahkamah tidak dapat membuat penemuan bahawa wang itu sebenarnya diterima oleh tertuduh seperti yang dicadangkan oleh pihak pendakwaan berdasarkan transaksi yang direkodkan dalam lejar tanpa rekod bahawa wang itu sebenarnya diterima oleh tertuduh dalam ruangan 'remark' (lihat perenggan 138 & 151).

(4) Saksi-saksi pendakwaan tidak memberikan penjelasan terperinci mengenai identiti seorang Nicole Tan ('Nicole'). Nicole memainkan peranan penting untuk menerangkan sifat pengaturan atau perjanjian antara UKSB dan dirinya atau subkontraktor Hong Kong kerana dia adalah orang yang menyediakan sebahagian besar dana daripada jumlah RM238,356,966.60 seperti yang dinyatakan dalam lejar. Saksi-saksi dari Hong Kong termasuk Nicole akan dapat memberikan penjelasan mengenai sumber dana sebenar terutamanya memandangkan PW15, PW16 dan PW17 mengesahkan bahawa sumber wang yang dibayar kepada tertuduh bukan berasal dari UKSB. Ringkasnya, sumber dana tidak dijelaskan (lihat perenggan 147–148).

(5) Keterangan PW15 mendedahkan dia membuat 40 penghantaran wang tunai kepada tertuduh. PW16 bagaimanapun berkata dia membuat beberapa kali penghantaran manakala PW17 berkata dia menghantar dua kali lagi. Oleh itu, ia bermakna terdapat lebih daripada 42 penghantaran, sekali gus jelas bercanggah dengan keterangan PW15 dan pertuduhan bahawa terdapat hanya 42 transaksi iaitu 42 penghantaran. PW16 juga mempunyai hubungan rapat dengan ahli keluarga tertuduh dan oleh itu adalah munasabah untuk mendapati PW16 yang sangat rapat dengan tertuduh akan melakukan lebih banyak penghantaran berbanding PW15. Tambahan pula, pihak pendakwaan tidak mengemukakan sebarang sampel sampul surat. Tiada bukti dibawa untuk menunjukkan saiz sampul surat yang digunakan. PW17, pembuat lejar itu mengakui semasa pemeriksaan balas bahawa penyerahan kedua wang tunai RM3 juta melalui bagasi adalah pemikiran semula. Pengakuan pemikiran semula oleh saksi utama pendakwaan iaitu PW17 adalah lebih daripada memadai untuk mendapati bahawa PW17 adalah dengan tiada kredibiliti. Selain itu, tiada rakaman CCTV dihasilkan di mahkamah dan pemandu, pengawal dan anggota polis tidak dipanggil. Slip transaksi Touch n Go, log panggilan telefon dan mesej dengan

tertuduh juga tidak dikemukakan (lihat perenggan 151).

(6) Tiga saksi utama yang dipanggil oleh pihak pendakwaan iaitu PW15, PW16 dan PW17 tidak boleh dipercayai dan juga tidak boleh diharap atau kredibel. Pihak pendakwaan gagal membuktikan unsur utama kesalahan di bawah kesemua 33 pertuduhan utama bahawa tertuduh telah menerima suapan dalam konteks s 16(a)(B) Akta SPRM seperti yang dinyatakan dalam pertuduhan. Berkenaan dengan 33 pertuduhan alternatif di bawah s 165 KK, kecuali bahagian di mana tertuduh adalah penjawat awam yang tidak dipertikaikan oleh pihak pembelaan, pihak pendakwaan gagal membuktikan unsur utama kesalahan itu iaitu penerimaan wang tanpa balasan (lihat 153–155).

(7) Berhubung tujuh pertuduhan alternatif di bawah s 165 KK yang melibatkan bayaran sekali sahaja kepada tertuduh, keterangan PW15, PW16 dan PW17 serta lejar gagal membuktikan unsur penerimaan wang tunai oleh tertuduh. Sebab yang sama digunakan untuk tujuh pertuduhan alternatif di bawah s 165 KK dan dua pertuduhan pindaan tambahan (lihat perenggan 156).

(8) Atas alasan bahawa pihak pendakwaan gagal membuktikan elemen penerimaan bagi kesalahan di bawah s 16(a)(B) Akta SPRM serta s 165 KK, oleh itu anggapan statutori di bawah s 50(1) dan (3) Akta SPRM tidak terpakai dan tidak boleh digunakan dalam undang-undang dan fakta terhadap tertuduh (lihat perenggan 157).

(9) Selepas mengemukakan akaun teraudit oleh pihak pembelaan bagi tempoh kewangan 2014 hingga 2018, tiga saksi utama pendakwaan iaitu PW15, PW16 dan PW17 mengubah keterangan mereka. Dalam kenyataan saksi bertulis mereka mengatakan bahawa wang yang diberikan kepada tertuduh adalah daripada UKSB. Bagaimanapun, mereka kemudian menukar keterangan mereka dengan mengatakan bahawa wang yang diberikan kepada tertuduh adalah daripada rakan kongsi UKSB di Hong Kong. Dalam semua pertuduhan yang diutamakan terhadap tertuduh, tidak disebut wakil UKSB yang telah memberikan wang kepada tertuduh. Seksyen 153 Kanun Tatacara Jenayah menghendaki pihak pendakwaan memberikan butir-butir mengenai identiti orang yang menyerahkan wang kepada tertuduh dalam semua pertuduhan. Terdapat keraguan yang tidak dapat diselesaikan dan tidak terjawab sama ada wang itu pernah wujud dan siapa yang menyerahkan wang kepada tertuduh. Butir-butir orang yang membuat penghantaran wang tunai hendaklah dinyatakan dalam semua pertuduhan untuk memberi tertuduh notis yang mencukupi tentang kesalahan yang didakwa mengikut pertuduhan. Ketiadaan butiran penting seperti siapa menyerahkan wang tunai kepada tertuduh merupakan prejudis serius terhadap hak tertuduh sebagai persediaan pembelaannya. Oleh itu, ketiadaan butiran sedemikian adalah fatal dan

menyebabkan pertuduhan terhadap tertuduh cacat (lihat perenggan 159–163).

(10) PW17 adalah pembuat lejar. Memandangkan keterangan saksi utama pendakwaan, PW15, PW16 dan PW17 adalah tidak kredibel, tidak boleh diharap dan tidak boleh dipercayai yang mana mereka banyak mengasaskan keterangan mereka pada lejar, oleh itu tiada pemberat diberikan kepada lejar (lihat perenggan 165).]

Cases referred to

Balachandran v PP [2005] 2 MLJ 301, FC (refd)
Dato Mokhtar bin Hashim & Anor v PP [1983] 2 MLJ 232, FC (refd)
Dato' Seri Anwar bin Ibrahim v PP and another appeal [2015] 2 MLJ 293; [2015] 2 CLJ 145, FC (folld)
Lee Kwan Woh v PP [2009] 5 MLJ 301; [2009] 5 CLJ 631, FC (distd)
Letitia Bosman v PP and other appeals (No 1) [2020] 5 MLJ 277, FC (refd)
Mohamad Radhi bin Yaakob v PP [1991] 3 MLJ 169, SC (refd)
Pendakwa Raya lwn Zul bin Hassan dan lain-lain [2013] 5 MLJ 489, CA (refd)
PP v Khong Teng Khen & Anor [1976] 2 MLJ 166, FC (refd)
PP v Mohd Radzi bin Abu Bakar [2005] 6 MLJ 393, FC (refd)
PP v Dato' Saidin bin Thamby [2012] 3 MLJ 476; [2012] 4 CLJ 15, CA (refd)
PP v Rosmah bt Mansor [2022] 11 MLJ 801, HC (refd)
PP v Sarjit Kaur a/p Najar Singh [1998] 1 MLJ 184; [1998] 5 CLJ 609, HC (refd)
PP v Su Liang Yu [1976] 2 MLJ 128 (refd)
Rosli bin Yusof v PP [2021] 4 MLJ 479; [2021] 7 CLJ 681, FC (distd)
Sundra Rajoo a/l Nadarajah v Menteri Luar Negeri, Malaysia & Ors [2021] 5 MLJ 209; [2021] 6 CLJ 199, FC (distd)
Tengku Adnan bin Tengku Mansor v PP [2022] 1 MLJ 93, CA (refd)
The State v Agan 384 SE 2d 863, SC (distd)
United States v Armstrong 517 US 456, SC (distd)
Yahya Hussein Mohsen Abdulrab v PP [2021] 5 MLJ 811, FC (distd)

Legislation referred to

Criminal Procedure Code ss 180, 180(4), 153, 153(1)
Evidence Act 1950 s 90A(2)
Federal Constitution arts 5, 8, 145
Malaysian Anti-Corruption Commission Act 2009 ss 16(a)(B), 41A, 50(1), (3), 52(1)(a)(ii)
Penal Code s 165

Raja Rozela bt Raja Toran (with Wan Shaharuddin bin Wan Ladin, Abdul Malik bin Ayob, Gan Peng Kun, Zander Lim Wai Keong and Thavani a/p Balakrishnan) for the prosecution.
Hisyam Teh Poh Teik (with Ahmad Zaidi bin Zainal, Hamidi bin Mohd Noh,

Aiman bin Abdul Rahman, Fatini Athirah bt Baharin and Sharifah Annafiza Al-Shahab bt Syed Fadzil) for the accused.

Mohd Yazid J:

BACKGROUND

[1] Dato' Seri Zahid bin Hamidi ('accused'), former Deputy Prime Minister cum Minister of Home Affairs is facing 33 charges under s 16(a)(B) Malaysian Anti-Corruption Commission Act 2009 ('the MACC Act') for 33 offences of corruptly receiving gratification from a company called Ultra Kinara Sdn Bhd ('UKSB') with 33 alternative charges under s 165 of the Penal Code ('the PC'), for 33 offences in the accused's capacity as a public servant for receiving a valuable thing without consideration. In addition, the accused has also been charged with seven alternative charges under s 165 of the PC. All offences are said to have been committed in two locations, ie either the private residence of the accused at Number 389, Jalan Bayu Nyaman, Country Heights Kajang, Selangor ('Country Heights residence') or the official residence of the Deputy Prime Minister at Seri Satria in Presint 16, Putrajaya ('Seri Satria residence').

[2] For the 33 main charges under s 16(a)(B) MACC Act, the accused was also facing 33 alternative charges under s 165 Penal Code.

[3] Based on the 33 main and alternative charges, the accused is said to have corruptly received a sum of SGD200,000 beginning the month of October 2014 until February 2015, SGD300,000 beginning the month of March 2015 until May 2017 and finally beginning June 2017 until March 2018 for a sum of SGD520,000 received by the accused. Based on the seven alternative charges, the accused is said to have received a total amount of SGD4,240,000 on 28 March 2017, 4 May 2017, September 2017, November 2017, 10 January 2018, 12 February 2018 and 2 March 2018 all at the Seri Satria residence.

[4] Based on the charges framed, all of the monies stated in the 33 main charges under s 16(a)(B) of the MACC Act relate to the contract which was awarded by the Ministry of Home Affairs ('MOHA') to UKSB.

[5] The said gratification is said to have been delivered and received by the accused every month beginning October 2014 until March 2018. In the event where there was no payment made for a particular month, the said payment would then be doubled in the following month.

[6] For the seven alternative charges under s 165 of the Penal Code, the accused is alleged to have received monies without consideration from UKSB

which had official dealings with the MOHA.

[7] Out of the 26 of the 33 main and alternative charges, the offences were alleged to have been committed in the Country Heights residence they are as follows:

No	Date	Amount involved
1.	October 2014	SGD200,000
2.	November 2014	SGD200,000
3.	December 2014	SGD200,000
4.	January 2014	SGD200,000
5.	February 2015	SGD200,000
6.	April 2015	SGD600,000
7.	May 2015	SGD300,000
8.	June 2015	SGD300,000
9.	August 2015	SGD600,000
10.	September 2015	SGD300,000
11.	October 2015	SGD300,000
12.	November 2015	SGD300,000
13.	December 2015	SGD300,000
14.	January 2016	SGD300,000
15.	March 2016	SGD300,000
16.	May 2016	SGD600,000
17.	July 2016	SGD600,000
18.	August 2016	SGD300,000
19.	September 2016	SGD300,000
20.	October 2016	SGD300,000
21.	November 2016	SGD300,000
22.	December 2016	SGD300,000
23.	19 January 2017	SGD300,000
24.	27 February 2017	SGD300,000
25.	June 2017	SGD600,000
26.	July 2017	SGD520,000

[8] For the seven other charges under s 165 Penal Code, the offences were alleged to have been committed at the Seri Satria residence on the dates specified as follows:

No	Date	Amount involved
1.	28 March 2017	SGD300,000
2.	4 May 2017	SGD300,000
3.	September 2017	SGD1,040,000

4.	November 2017	SGD1,040,000
5.	10 January 2018	SGD520,000
6.	12 February 2018	SGD520,000
7.	2 March 2018	SGD520,000

[9] For the seven charges under s 165 Penal Code in respect of one-off payments received by the accused, the offences were alleged to have been committed on the dates and places as follows:

No	Date	Place	Amount involved
1.	June 2015	Country Height, Kajang	RM125,000
2.	August 2015	Country Height, Kajang	SGD120,000
3.	May 2016	Country Height, Kajang	EURO15,000
4.	July 2016	Country Height, Kajang	USD15,000
5.	May 2017	Country Height, Kajang	SGD1,000,000
6.	October 2017	Country Height, Kajang	SGD30,000
7.	April 2017	Country Height, Kajang	RM3,000,000

[10] On 9 June 2022 and 16 June 2022, when PW15 was giving evidence, the prosecution tendered two additional amended charges, the offences for these two additional amended charges were alleged to have been committed on the dates and places as follows:

No	Date	Place	Amount involved
1.	27 March 2018	Country Heights, Kajang	RM3,000,000
2.	May 2016	Country Heights, Kajang	Swiss Franc 5,000

[11] For ease of reference, one of the 33 main charges under s 16(a)(B) of the MACC Act and one of the alternative charges under s 165 of the Penal Code are reproduced as follows:

Main charge:

Bahawa kamu, pada bulan April 2015, di No 389, Jalan Bayu Nyaman, Country Heights, di dalam Daerah Kajang, di dalam Negeri Selangor, telah secara rasuah

menerima suatu suapan daripada syarikat Ultra Kirana Sdn Bhd iaitu wang tunai berjumlah SGD600,000.00 sebagai upah untuk diri kamu sebagai seorang pegawai badan awam, iaitu Menteri Dalam Negeri di Kementerian Dalam Negeri Malaysia, oleh sebab kamu melakukan apa-apa perkara yang sebenarnya dengan badan awam itu terlibat, iaitu mengekalkan kontrak Perjanjian Untuk Membekalkan Sistem Bersepadu Visa Luar Negara (VLN) kepada Syarikat Ultra Kirana Sdn Bhd, oleh Kementerian Dalam Negeri Malaysia, dan dengan itu kamu telah melakukan satu kesalahan di bawah seksyen 16(a)(B) Akta Suruhanjaya Pencegahan Rasuah Malaysia 2009 [Akta 694] dan boleh dihukum di bawah seksyen 24(1) Akta yang sama.

Translation:

That you on April 2015, at No 389, Jalan Bayu Nyaman, Country Heights, in the Districh of Kajang, in the State of Selangor has corruptly received gratification from Syarikat Ultra Kirana Sdn Bhd, namely, cash in the sum SGD600,000.00 as a reward for yourself being a public servant namely, the Minister of Home Affairs, or otherwise on account of any officer of a public body, which was to maintain the contract 'Perjanjian Untuk Membekalkan Sistem Bersepadu Visa Luar Negara (VLN) to Syarikat Ultra Kirana Sdn Bhd' by the Ministry of Home Affairs and you have thereby committed an offence under section 16(a)(B) of the Malaysian Anti Corruption Act 2009 [Act 694] which is punishable under section 24(1) of the same Act.

A sample of the alternative charges under s 165 of the Penal Code is reproduced as follows:

Bahawa kamu, pada bulan April 2015, di Nombor389, Jalan Bayu Nyaman, Country Heights, di dalam Daerah Kajang, di dalam Negeri Selangor, sebagai seorang penjawat awam, iaitu Menteri Dalam Negeri di Kementerian Dalam Negeri Malaysia, telah mendapat untuk diri kamu sesuatu benda berharga iaitu wang tunai sebanyak SGD600,000.00 tanpa balasan dari Syarikat Ultra Kirana Sdn Bhd, yang mana kamu mengetahui bahawa Syarikat Ultra Kirana Sdn BHd tersebut mempunyai hubungan dengan kerja rasmi kamu dan oleh yang demikian, kamu telah melakukan satu kesalahan di bawah seksyen 165 Kanun Keseksaan.

Translation:

That you, on April 2015, at No 389, Jalan Bayu Nyaman, Country Heights, in the District of Kajang, in the state of Selangor, being a public servant, namely as the Minister of Home Affairs Malaysia, obtained for yourself a valuable thing, namely, cash in the sum SGD600,000.00 without consideration from Ultra Kirana Sdn Bhd, when you knew that Ultra Kirana Sdn Bhd had a connection with your official functions, and you have thereby committed an offence punishable under section 165 of Penal Code.

[12] The above charges involved 42 transactions.

[13] In order to establish a prima facie case, the prosecution had called 18 witnesses and tendered 110 exhibits. The prosecution witnesses and their roles are as follows: A

(a) PW1 — Muhamad Akamaludin bin Asabdullah as the Assistant Registrar of the Companies Commission of Malaysia (2018); B

(b) PW2 — Azman Azra bin Abdul Rahman as the Chief Assistant Secretary, Division of Immigration Affairs, Ministry of Home Affairs (2008–2015);

(c) PW3 — Siti Jalilah bt Abd Manap as the Deputy Head of Division, Division of Immigration Affairs, Ministry of Home Affairs (2016–2018); C

(d) PW4 — Dato' Suriani bt Dato' Ahmad as the Deputy (Policy and Control), Ministry of Home Affairs (2015–2017);

(e) PW5 — Sheeba bt Kunhimon as the Deputy Head of Division, Cabinet, Constitution and Inter-Governmental Relations Division, the Prime Minister Department (2006–2019); D

(f) PW6 — Tan Sri Alwi bin Ibrahim as the Chief Secretary of the Ministry of Home Affairs (2015–2019); E

(g) PW7 — Dato' Raja Azhar bin Raja Abdul Manap as the Senior Deputy Undersecretary of the Ministry of Home Affairs (2008–2011);

(h) PW8 — Dato' Abdul Halim bin Mohammad as the Political Secretary to the Minister of Home Affairs (May 2013–May 2019); F

(i) PW9 — Datuk Muhd Khair bin Mohamed Annuar as Senior Private Secretary to the Deputy Prime Minister (July 2015–October 2017);

(j) PW10 — Dato' Shahril bin Ismail as Division Secretary, Division of Immigration Affairs, Ministry of Home Affairs (2014–2017); G

(k) PW11 — Djuliana bt Jamaluddin as Assistant Secretary, Division of Immigration Affairs, Ministry of Home Affairs (2007–2012);

(l) PW12 — Dato' Seri Abdul Rahim bin Mohamed Radzi as Undersecretary, Ministry of Home Affairs (2012-2013); H

(m) PW13 — Mohamad Firdaus bin Ismail Assistant Secretary, Division of Immigration Affairs, Ministry of Home Affairs (2009–2012);

(n) PW14 — Datuk Fadzil bin Ahmad, Director Ultra Kirana Sdn Bhd (UKSB) (2010–current); I

(o) PW15 — Harry Lee Vui Khiun, Director, UKSB (2012–2018);

(p) PW16 — Wan Quoris Shah bin Wan Abdul Ghani as the Director, UKSB (2013–2018);

(q) PW17 — David Tan Siong Sun as the Administrative Manager, UKSB (2012–2018); and

(r) PW18 — Mahendran a/l Vrejenan as an Investigating Officer, Malaysian Anti-Corruption Commission.

FACTS OF THE CASE

[14] The accused was the Deputy Prime Minister and also the Minister of Home Affairs at the time of the alleged offences pursuant to the charges. After the 13th General Election, on 16 May 2013 the accused replaced Dato' Seri Hishamuddin Hussein as the Minister of Home Affairs.

[15] When Dato' Seri Hishamuddin was the Minister of Home Affairs, through a written agreement called the Agreement for Providing Visa Facilitation Services in People's Republic of China ('PRC') ('SPPV 2012 agreement') with the Government of Malaysia, UKSB was awarded the contract to provide Visa Facilitation Services ('VFS') for a period of six years beginning 15 May 2012 until 14 May 2018 ('P20').

[16] In view of the satisfactory performance by UKSB, UKSB and the Government namely MOHA and the Immigration Department of Malaysia ('Immigration') had engaged in series of negotiations to expand the VFS to other countries and to introduce a new system called Visa Luar Negara ('VLN').

[17] On 24 January 2014 UKSB issued a letter to Dato' Seri Najib bin Tun Abdul Razak ('Najib'), the Prime of Minister of Malaysia at the material time and requested that UKSB be appointed as the sole operator for One-Stop Centre ('OSC') in China, in which VLN was to be the sole system for the processing of visas to enter Malaysia. On 30 January 2014 Najib had minuted on the said letter as follows, 'YB Datuk Seri Zahid, sila bantu dalam hal ini. Kontrak ini perlu diselesaikan (YB Datuk Seri Zahid, please assist in this matter. This contract has to be resolved)'. On the same letter, the accused had on 12 February 2014 minuted as follows, 'PSU(IM)S2 —Tindakan. Berdasarkan minit YABPM, sila sediakan kertas pertimbangan dasar (MKDN) berdasarkan perkara-perkara dinyatakan di dalam surat ini. Susul untuk dijadikan dasar jika sesuai (PSU(IM)S2, Action. Based on the minute of the YABPM, please prepare minute paper (MKDN) based on the matters stated in this letter. Follow-up to be made as policy if appropriate' (exh P27).

[18] On 28 February 2014 an agreement for the provision of the Visa Luar Negara ('VLN') integrated system was executed between the Government of Malaysia and UKSB for a period of six years beginning 1 November 2013 until 31 October 2018. Under this agreement, UKSB was to develop, integrate and

maintain the VLN system at its own cost while the proprietary right of the VLN system belongs to the Government (exh P15). A

[19] On 27 October 2015 UKSB again issued a letter to Najib requesting that the Government to expedite the implementation of the E-Visa globally. The next day, Najib minuted on the said letter as follows, 'YAB Dato' Sri Hj Zahid — syarikat ini sudah dianugerahkan kontrak E-visa. Sila teruskan perlaksanaanya. E-Visa untuk China boleh dilancarkan pada 1 Januari 2016' (YAB Dato' Sri Hj Zahid — this company has been awarded the E-Visa contract. Please proceed with the implementation. E-Visa for China can be launched on 1 January 2016)' (exh P29A). The Chief Private Secretary of the Prime Minister extended the letter in exh P29A to the accused. The accused minuted on the said letter as follows, 'Dato' Sri KSU, Ambil tindakan segera dan susuli tindakan (Dato' Sri KSU, Take immediate action and follow up)' (exh P29). B C D

[20] Beginning 25 February 2016, UKSB began communicating with the accused. UKSB by way of its letter dated 25 February 2016 addressed to the accused requested for the centralisation of the VLN and OSC service charges in China consistent with the implementation of the E-Visa and E-NTRI at the rate of RM205. The accused on 27 February 2016 minuted on the said letter as follows, 'SUB-IMM, saya tiada halangan untuk penyelarasan (SUB-1 MM, I have no objection for the reconciliation)' (exh P28). E

[21] MOHA then by its letter dated 11 March 2016 informed all the representative offices of Malaysia in China and Hong Kong for the implementation and enforcement of the OSC service charge of RM100 and VLN service charge of RM105 effective 15 March 2015. F

[22] On 17 October 2016 UKSB issued two separate letters addressed to the accused for the extension of the VLN and E-Visa contract for six years and requested that the VLN and E-Visa system be used in visa processing centres (exhs P30 and P56). On the first letter, the accused had on 18 October 2016 minuted as follows, 'Dato' Sri KSU/ Dato' PUU. Saya tiada halangan perlanjutan untuk tempoh selama (6) tahun sehingga 31 Ogos 2025-spt tercatat dalam perjanjian perkara 2.2.1 yang sediaada. Sila sediakan 'Supplementary Agreement untuk merealisasikan dengan segera' (Dato/Sri KSU/Dato' PUU, I have no objection for the extension for (6) years until 31st August 2025 as stated in the agreement clause 2.2.1. Please prepare the 'Supplementary Agreement to materialise urgently') (exh P30(A-K). G H I

[23] On the second letter, the accused had on 18 October 2016 minuted as follows, 'Dato' Shahril Dato' Ismail (SUB-IMM). Sila laksanakan VLN untuk semua pejabat MALAWAKIL diseluruh dunia' (Dato' Shahril Dato' Ismail

(SUB-IMM), please implement VLN for all MALAWAKIL offices worldwide) (exh P56).

[24] The Private Secretary of the accused by his own letter dated 20 October 2016 to the Chief Secretary of MOHA requested for his attention and action on the minutes of the accused (exh P30).

[25] In view of no response from MOHA, UKSB again issued a letter to the accused dated 6 February 2017 requesting for an extension of the VLN and E-Visa contract for 6 years commencing 31 October 2019 until 2025. The accused had on 9 February 2017 minuted on the said letter as follows, 'Dato' Sri KSU, oleh kerana KDN telah berpuas hati dengan khidmat syarikat ini, sila lanjutkan perlaksanaan kontrak VLN dan E-Visa untuk tempoh 6 tahun sehingga 2025 (Dato' Sri KSU, given that MOHA is satisfied with the services of this company, please extend the VLN and E-Visa contract for 6 years until 2025)' (exh P31A (A-O).

[26] The Private Secretary of the accused by his own letter dated 14 February 2017 to the Chief Secretary of MOHA requested for his attention and action on the minutes of the accused (exh P31).

[27] The Chief Secretary of MOHA had on 14 February 2017 minuted on exh P31 to the Deputy Chief Secretary (Policy) 'minta sediakan minit ceraian (request to prepare a policy paper)'. Thereafter, PW10 Dato' Shahril bin Ismail, the Division Secretary of the Immigration prepared the policy paper with the following recommendations:

SYOR

5.1 YAB MDN adalah dimohon mengambil maklum dan menimbangkan perkara-perkara berikut;

a. bersetuju supaya Prestariang sebagai syarikat pemegang konsesi SKIN dibenarkan berunding dengan UKSB secara business to business dan memaklumkan outcome rundingan kepada KDN;

b. bersetuju agar kontrak VLN disambung semalam enam (6) tahun. Walaubagaimanapun, kadar syiling kutipan caj VLN dan terma kontrak bagi tujuan perlanjutan perlu dirunding semula dengan mengambilkira profit sharing dengan Kerajaan hasil daripada kutipan caj VLN, dan;

c. bersetuju agar kontrak penyelenggaraan VLN disambung sehingga SKIN siap dibangunkan dijangka pada tahun 2020.

(Translation)

Recommendation

5.1 YAB Minister, please take note and consider the following recommendations

(a) Agreed that Prestariang as the SKIN concessionaire be allowed to negotiate with UKSB on business to business basis and inform MOHA of the outcome of the negotiation.

(b) Agreed that the VLN contract be extended for 6 years, notwithstanding that the VLN ceiling charges and terms of contract for the purpose of extension had to be renegotiated to take into account profit sharing.

(c) Agreed that the VLN maintenance contract was to be extended until the development of SKIN which was to be completed in 2020.

[28] However, PW4 Dato' Suriani bt Dato' Ahmad, Deputy Chief Secretary, in her comment (Ulasan), on 1 March 2017 minuted, 'Disyorkan supaya kontrak dibuat secara 2 + 2 + 2 supaya perjanjian boleh dikaji secara sekala' (Suggested that the contract be made 2 + 2 + 2 to enable the agreement be reviewed periodically). The Chief Secretary, on the same day, in his comments, minuted, 'spt ulasan di para 7 di atas' (as recomended at para 7 above). The accused on the same day, ticked a box in the policy paper opting for the recommendation at para (b) of the said policy paper prepared by PW10.

[29] MOHA did not carry out the accused's minute. Thereafter UKSB through its letter dated 15 May 2017 addressed to the accused, requested an approval to extend the OSC contract implementation period for visa facilitation services ('VFS') in China for six years. On the 16 May 2017, the accused minuted on the said letter as follows, 'Dato' Sri KSU, SUB-IM, Sila laksanakan lanjutan kontrak OSC 6 tahun lagi sehingga 15.5.2024' (Dato' Sri KSU, SUB-IM, Please implement the OSC contract extension for 6 years until 15 May 2024)' (exh P37(A-E)).

[30] The Private Secretary of the accused by his own letter dated 16 May 2017 to the Chief Secretary of MOHA requested for his attention and action on the minutes of the accused (exh P37).

[31] On 17 May 2017 in a workshop attended by MOHA, Immigration and UKSB to discuss the issue of VLN contract period extension, at the end of the said workshop, it was decided that the VLN and E-Visa contract be extended for a period of three years.

[32] PW14 in his evidence said that, based on the response from MOHA in order to avoid the necessity to refer the matter to Unit Kerjasama Awam Swasta ('UKAS') also known as Public Private Partnership Unit of the Prime Minister's Department, UKSB should apply to MOHA for a three year extension of the VLN contract.

[33] Based on this reason, UKSB then wrote two letters dated 14 June 2017

to the accused. In the first letter, UKSB proposed that the contractual period for the implementation of the VLN and E-Visa system be extended for three years. The accused on 15 June 2017 minuted on the said first letter as follows, 'Dato' Sri KSU, Sila sambung kontrak VLN/E-visa sehingga tahun 2022 & tidak perlu ke Ukas dan Kabinet. Sila segerakan' (Dato' Sri KSU, Please extend the VLN/E-Visa contract until 2022 and not required to refer to UKAS and the Cabinet. Please expedite) (exh P34 C-D).

[34] The private secretary of the accused by his own letter dated 16 June 2017 to the Chief Secretary of MOHA requested for his attention and action on the minutes of the accused in the said first letter (exh P34 (A-B)).

[35] On the second letter dated 14 June 2017 to the accused, UKSB requested for the OSC contract in the Republic of China to be extended for three years from 15 May 2018 until 2021. The accused minuted on the said second letter as follows, 'Dato' Sri KSU, sila sambung kontrak OSC China hanya 3 tahun sehingga 2021. Sila segerakan & tidak perlu dibawa ke UKAS & Kabinet' (Dato' Sri KSU, please extend the OSC China contract only for 3 years until 2021. Please expedite & no need to refer to UKAS and the Cabinet (exh P38 (A-B))

[36] The Private Secretary of the accused by his own letter dated 16 June 2017 to the Chief Secretary of MOHA requested for his attention and action on the minute of the accused in the second letter (exh P38).

[37] On 22 June 2017, UKSB entered into the first supplementary agreement with the Government of Malaysia called 'Perjanjian Tambahan Pertama untuk membekalkan Visa Bersepadu Luar Negara (VLN)' (This agreement is supplementary to the VLN 2014 Agreement whereby UKSB would now provide for the entry and the eVCOMM systems) (exh P36(A)).

[38] On 22 June 2017, UKSB also entered into a second supplementary agreement with the Government of Malaysia called 'Perjanjian Tambahan Kedua untuk membekalan Sistem Bersepadu Visa Luar Negara (VLN)' (This agreement was to extend the VLN 2014 Agreement for 3 years from 1 November 2019 until 31 October 2022) (exh P36 (B)).

[39] However on 24 July 2017, PW10 prepared a policy paper recommending for the extension of the VLN contract period for three years subject to the condition that the matter be referred to UKAS and the Cabinet. This policy paper on 24 July 2017 was then referred to the Deputy Chief Secretary and Chief Secretary of MOHA. On 24 July 2017, the Deputy Chief Secretary minuted, 'Ambil maklum' (Noted). The Chief Secretary of MOHA on the same day minuted, 'spt disyorkan' (as recommended). The accused on

the same day, 24 July 2017 did not choose either of the two recommendations in the said policy paper ie first, extension of the VLN contract be referred to UKAS and the Cabinet; and second, VLN contract in China be prepared based on the contract agreement OSC approved by the PUU (Legal Advisor MOHA in June 2017). However, at column 'Cadangan Lain (Other Recommendation)', the accused minuted, 'Diluluskan lanjutan sehingga tahun 2021 tanpa dibawa ke UKAS dan atau MGM seperti persetujuan dalam VLN terdahulu' (Extension approved until 2021 without being referred to UKAS and or the Cabinet as in the past VLN contract) (exh P39(A-G)). From my observation, this minute by the accused came after both of the supplementary agreements with the Government for the extension of the contract were executed.

[40] On 28 July 2017, UKSB entered into an Agreement for the Establishment, Operation and Implementation of the One Stop Centre ('OSC') For Visa Application in the people's Republic of China with the Government of Malaysia. This agreement was effective from 15 May 2018 until 14 May 2021 and was meant to extend the contract period for the SPPV 2012 agreement (exh P40).

BURDEN OF PROOF AT THE END OF PROSECUTION CASE

[41] Pursuant to s 180 of the Criminal Procedure Code ('the CPC') it is the duty of the court to consider whether the prosecution has made out a prima facie case against the accused. If the court finds that the prosecution has not made out a prima facie case against the accused, the court shall record an order of acquittal. If the court finds that a prima facie case has been made out against the accused on the offence(s) charged, the court shall call upon the accused to enter his defence.

[42] Subsection 180(4) of the CPC places emphasis that a prima facie case is only made out against the accused where the prosecution has adduced credible evidence proving each ingredient of the offence which if unrebutted or unexplained would warrant a conviction. In other words, it is incumbent upon the prosecution to adduce credible evidence either through the oral testimony of witnesses or contemporaneous documents proving, each ingredient of the offence charged.

[43] In order to ascertain whether the prosecution has made out a prima facie case and thereby discharged its burden, the court must undertake a maximum evaluation of the credibility and reliability of the all the evidence adduced in totality whether the elements of the offence have been established.

[44] There are many past decisions by the court on this subject, the leading

authority is *Balachandran v Public Prosecutor* [2005] 2 MLJ 301 where the Federal Court held that a prima facie case is one that is sufficient for the accused to be called upon to answer. The evidence adduced must be such that it can be overthrown only by evidence in rebuttal. In other words, each ingredient of the offence must be sufficiently supported by the evidence adduced by the prosecution.

[45] The Federal Court reaffirmed *Balachandran* in *Public Prosecutor v Mohd Radzi bin Abu Bakar* [2005] 6 MLJ 393 and laid down the steps to be taken by a trial judge at the close of the prosecution case:

> [8] For the guidance of the courts below, we summarise as follows the steps that should be taken by a trial court at the close of the prosecution's case:
>
> (a) at the close of the prosecution's case, subject the evidence led by the prosecution in its totality to a maximum evaluation. Carefully scrutinise the credibility of each of the prosecution's witnesses. Take into account all reasonable inferences that may be drawn from that evidence. If the evidence admits two or more inferences, then draw the inference that is most favourable to the accused;
>
> (b) ask yourself the question: If I now call upon the accused to make his defence and he elects to remain silent, am I prepared to convict him on the evidence now before me? If the answer to that question is 'Yes', then a prima facie has been made out and the defence should be called. If the answer is 'No', then a prima facie case has not been made out and the accused should be acquitted;
>
> (c) after the defence is called, the accused elects to remain silent, then convict;
>
> (d) after the defence is called, the accused elects to give evidence, then go through the steps set out in *Mat v Public Prosecutor* [1963] 1 MLJ 263.

INGREDIENTS OF THE OFFENCE

Section 16(a)(B) of the MACC Act

[46] Guided by decided cases, I am of the considered view that for offences under s 16(a)(B) of the MACC Act, the ingredients of the offence which need to be proved by the prosecution are as follows in the context of the present case.

(a) first, the accused corruptly received gratification for himself; and

(b) second, the said gratification was received as inducement or reward to the accused as an officer of a public body in the capacity as the Minister of Home Affairs to extend and maintain the OSC and VLN contracts which were awarded to UKSB.

[47] I remind myself of the statutory presumption under sub-s 50(1) of the

MACC Act which provides as follows:

> Where in any proceedings against any person for an offence under section 16, 17, 18, 20, 21, 22 or 23 it is proved that any gratification has been received or agreed to be received, accepted or agreed to be accepted, obtained or solicited, given or agreed to be given, promised, or offered, by or to the accused, the gratification shall be presumed to have been corruptly received, or agreed to be received, accepted or agreed to be accepted, obtained or attempted to be obtained, solicited, given or agreed to be given, promised, or offered as an inducement or a reward for or on account of the matters set out in the particulars of the offence, unless the contrary is proved.

[48] For an offence under s 165 of the Penal Code, the ingredients of the offence that have to be proved are as follows:

(a) the accused was a public servant;

(b) the accused obtained a valuable thing without consideration; and

(c) such valuable thing was obtained from UKSB, whom the accused knew to have any connection with the official functions of himself in the capacity of the Minister of Home Affairs.

[49] In their submission the defence first argued that the charges preferred against the accused were a result of selective prosecution wherein the learned public prosecutor failed to act fairly and had violated arts 5 and 8 of the Federal Constitution. Secondly, the receipt of a political donation was not an offence in law. On these two grounds, the prosecution of the accused was bad in law, according to defence.

ANALYSIS AND FINDINGS

Political donation

[50] On the issue of political donation, the defence contends as follows:

(a) that the evidence of the three key prosecution witnesses ie PW15, PW16 and PW17 reveals that a few past and present ministers had received political donation from UKSB;

(b) the testimony of these three witnesses confirmed that serving and retired government servants from MOHA and the Immigration also received monies from UKSB, some even on a monthly basis; and

(c) the defence counsel during cross examination of these three prosecution witnesses suggested that the accused admitted that he had received two political donations of RM100,000 each amounting to RM200,000 in total from PW15, PW16 and PW17. In this regard the defence counsel

A argued that the receipt of political donation is neither illegal nor wrong in law based on the three following cases cited by the defence:

(i) *Public Prosecutor v Dato' Saidin bin Thamby* [2012] 3 MLJ 476; [2012] 4 CLJ 15;

B (ii) *Pendakwa Raya lwn Zul bin Hassan dan lain-lain* [2013] 5 MLJ 489; and

(iii) *Tengku Adnan bin Tengku Mansor v Public Prosecutor* [2022] 1 MLJ 93.

C

[51] I have scrutinised the three cases cited by the learned defence counsel. It can be extracted from the cases cited by the defence that the receipt of political donation is only not an offence in law if the said amount received was used for political purposes only.

D

[52] In *Public Prosecutor v Dato' Saidin bin Thamby*, the witnesses testified that the accused received RM1m as political donation for UMNO Selayang to pay for the UMNO Selangor building. None of the prosecution witnesses testified that the said money was corruptly given to the accused as gratification. The accused was merely a recipient on behalf of UMNO Selangor. Based on such finding, the donation was purely for political purpose.

E

[53] In *Pendakwa Raya lwn Zul bin Hassan dan lain-lain*, the Court of Appeal in deciding whether a donation to a political party could be an offence or not, it depended on the circumstances and facts of each case. Based on the said Court of Appeal decision, the amount received would have been corruptly received if such amount was used for any reason other than political purposes.

F

G

[54] In *Tengku Adnan bin Tengku Mansor v Public Prosecutor*, the majority decision the Court of Appeal concluded that the learned trial judge of the High Court failed to consider the evidence of the two prosecution witnesses that the sum of RM2m was for political contribution to UMNO Kuala Lumpur for the two by-elections in Sungai Besar and Kuala Kangsar. The learned trial judge also failed to take into account the evidence of the investigating officer that the said RM2m could have been a political donation.

H

[55] From my understanding of the decided authorities, political donation is only a good defence provided that first, the money had been received as a political donation and secondly, the monies had been spent purely for political purposes with supporting evidence to that effect. For instance, in *Saidin bin Thamby* case the prosecution witnesses confirmed that the money received was only for UMNO Selangor building.

I

[56] Returning to the present case, it is my considered view the defence counsel had only met the first requirement by suggesting that the accused only received two political donations of RM100,000 each on two occasions amounting to RM200,000 in total. The defence has however failed to lead evidence to suggest that the political donation of RM200,000 received was in fact spent for political purposes. Therefore, political donation is not a defence for the accused and not applicable in the context of the present case.

SELECTIVE PROSECUTION

[57] The defence contends that evidence of the prosecution witnesses ie PW15, PW16 and PW17 and ledger (exh P63) reveal that certain serving and former Cabinet ministers as well as serving and retired government servants had received monies from UKSB but they were not prosecuted in court. And because of this it is contended that the accused was selectively prosecuted. It is also contended that the prosecution had failed to act fairly and violated the accused's constitutional rights under arts 5 and 8 of the Federal Constitution.

[58] In support of the said defence contention, amongst others the following cases were cited:

(a) *Sundra Rajoo a/l Nadarajah v Menteri Luar Negeri, Malaysia & Ors* [2021] 5 MLJ 209; [2021] 6 CLJ 199;

(b) *Rosli bin Yusof v Public Prosecutor* [2021] 4 MLJ 479; [2021] 7 CLJ 681;

(c) *Lee Kwan Woh v Public Prosecutor* [2009] 5 MLJ 301; [2009] 5 CLJ 631; and

(d) *Yahya Hussein Mohsen Abdulrab v Public Prosecutor* [2021] 5 MLJ 811.

[59] I have read the above cases. I find that the facts in the *Sundra Rajoo* case can be distinguished from the present case. The main issue in *Sundra Rajoo* concerns whether applicant had immunity from prosecution of any criminal offence in carrying out his duties as the Director of the Kuala Lumpur Regional Centre for Arbitration which was provided under the statute. It was because of the peculiar facts and issues in *Sundra Rajoo* and in the context of a judicial review, the Federal Court decided that a court could review the exercise of the prosecutorial discretion by the learned public prosecutor. I am of the considered view that the scope of review was only limited to the facts of that case in *Sundra Rajoo* and certainly not to the present case.

[60] Further, the case of *Rosli bin Yusof v Public Prosecutor* concerns a situation where the prosecution had failed to offer witnesses who were arrested together with the accused in the car to the defence at the close of the prosecution case. Such failure amounts to a contravention of the principle that

A the prosecution must be conducted the case fairly. The facts are clearly distinguishable from the present case. Therefore, it is inapplicable in this case.

[61] I further opine that *Lee Kwan Woh* is of no relevance to this case because the accused in *Lee Kwan Woh* failed to obtain a fair trial in that case. The issue B of unfair trial does not arise at all in the present case.

[62] In *Yahya Hussein Mohsen,* it involves the incompetency of the defence counsel and in view of that the accused was deprived of a fair trial. In this case, C the defence of the accused was led by Datuk Hj Hisyam Teh Poh Teik, a very well known and experienced criminal defence counsel with the assistance of two other prominent criminal defence counsel. In fact, the lead defence counsel himself has authored a few books on the subject of criminal law. Hence the issue of incompetency of the defence counsel does not arise at all in the D present case. Thus, I find no violation of the accused' constitutional rights under arts 5 and 8 of the Federal Constitution as alleged by the defence. The principle of equality before the law propounded by the Federal Court in *Letitia Bosman v Public Prosecutor and other appeals (No 1)* [2020] 5 MLJ 277 and *Public Prosecutor v Khong Teng Khen & Anor* [1976] 2 MLJ 166 and *Public* E *Prosecutor v Su Liang Yu* [1976] 2 MLJ 128 are therefore inapplicable in the context of the present case.

[63] In my considered view, art 145 of the Federal Constitution is clear in that the learned public prosecutor is fully empowered to institute prosecution F based on the outcome of an investigation carried out by an authority. In view thereof certain foreign authorities cited by the defence ie the 14th Amendment of the US Constitution (which is similar to art 8 of the Federal Constitution) and the cases of *The State v Agan* 384 SE 2d 863 and *United States* G *v Armstrong* 517 US 456 (1996) are irrelevant and inapplicable in the context of the present case. The ratio on equality before the law and fair trial of those foreign cases cannot override art 145 of the Federal Constitution. I am of the further opinion that any issue of equality and fair trial as emphasised by the defence counsel herein must be considered in the context and guided by the H clear and plain provisions of the Federal Constitution.

[64] Finally, it must be observed that the learned defence counsel focused primarily on the issues of fair trial and selective prosecution throughout the trial and during submissions, however based on the foregoing analysis I undertaken by me, the issues of unfair trial and selective prosecution do not arise at all in the present case. Thus, I reject the arguments of unfair trial and selective prosecution as contended by the learned defence counsel as they are devoid of merit.

THE 33 CHARGES UNDER S 16(a)(B) OF THE MACC ACT

[65] Based on the submissions of both parties, the crux of the case concerns whether the accused had corruptly received the monies in cash from UKSB based on the times and dates as stated in the charges preferred against the accused.

[66] To prove this element, the prosecution relied solely on the evidence of PW14, PW15, PW16, PW17 and the ledger prepared by PW17 (exh P63(1–52)).

[67] The prosecution also relied on the circumstantial evidence ie the conduct of the accused in minuting on certain letters of UKSB, amongst others, stating that the extension of the subject contract need not be referred to UKAS and the Cabinet against the recommendation of PW10 for the extension to be referred to UKAS and the Cabinet and also agreed to the suggestion of UKSB for an initial contractual extension of six years but subsequently changed to three years.

[68] In assessing whether there was in fact prima facie evidence led to support or prove the giving and receipt of the gratification as alleged in all the charges, I consider the following evidence:

(a) circumstantial evidence; and

(b) evidence of PW14, PW15, PW16, PW17 and the ledger (exh P63 (1–52)).

CIRCUMSTANTIAL EVIDENCE

[69] Circumstantial evidence is evidence of circumstantial of or surrounding an event or offence from which a fact in issue may be inferred. Where circumstantial evidence is the basis of the prosecution case, the evidence proved must irresistibly point to one and only one conclusion, the guilt of the accused (*Public Prosecutor v Sarjit Kaur a/p Najar Singh* [1998] 1 MLJ 184; [1998] 5 CLJ 609 and *Dato Mokhtar bin Hashim & Anor v Public Prosecutor* [1983] 2 MLJ 232).

[70] It is trite that the circumstantial evidence must point toward the finding or conclusion of guilt of the accused.

[71] Based on the facts stated earlier, the first and second supplementary agreements were executed not long after the accused agreed for the extension of three years and his instruction that the extension of the subject contract need not be referred to UKAS and the Cabinet notwithstanding the

recommendation of PW10, thereby showing the accused's interest and involvement in the contract extension. However, this circumstantial evidence could only lead me to draw an inference of the involvement of the accused in extending the subject contract. However, the key question a court must determine is whether there exists prima facie evidence on the giving and receipt of the alleged gratification pursuant to all the charges.

Evidence of PW14

[72] PW14 was the co-founder of UKSB and made the director upon incorporation in 2009. In November 2012, PW14 resigned as UKSB's director and was only reappointed later on 10 September 2013. PW14 remains a director of UKSB, even until the date of his testimony in court.

[73] The affairs of UKSB were solely managed by PW14.

[74] PW15 testified that even financial matters were also managed by PW14.

[75] PW14 oversaw the dealings and implementation of the UKSB contracts with the government of Malaysia and subcontractors in Hong Kong and China. However, PW14 said he had no knowledge on the payments by UKSB to the accused as stated in the charges.

[76] PW14 also testified that he did not know of the existence of the ledger (P63 (1–52)). Neither was he informed of the contents of the ledger (P63 (1–52)).

[77] PW14 admitted that he was the signatory of all the letters by UKSB addressed to Dato' Seri Hishamuddin Tun Hussein, Najib and the accused. Upon receiving the necessary approvals, PW14 admitted that he was the one who dealt with various stakeholders and oversaw the implementation of the contract.

[78] After Pakatan Harapan took over after the 14th General Election, the contract was terminated but PW14 remained as a director of UKSB.

[79] For the period between 2014 to 2018, PW14 knew that the revenue collected by UKSB from the contract proceeds was around RM100m.

[80] PW14 agreed the amounts appeared in the ledger (P63 (1–52)) are not reflected or captured in the audited accounts of UKSB for the financial years of 2014 until 2018 (exhs P56–61).

Evidence of PW15

[81] PW15 was the director of UKSB from 29 March 2012 until his resignation 30 January 2018. His main duty at UKSB was to grow UKSB business to an international level player. While the day-to-day running and management of UKSB including public relations were left to the other directors ie PW14 and PW16.

[82] The first ti me PW15 met the accused was in May 2013 at Tawakal Hospital where the son of the accused had met with the accident and was treated there. He went with his colleague, PW16. It was a short meeting with the accused. They spoke briefly about their contract with MOHA but the accused acknowledged what they told him but did not respond much.

[83] After the first meeting at Tawakal, PW15 and PW16 met the accused a few more times mostly at the Country Heights residence. After he met the accused in 2015, PW15 and PW16 also met the accused at the Seri Satria residence. The purpose of the meetings was to discuss business matters specifically about the visa processing system. After the discussion about work and business, the accused would always talk about politics and UMNO, and the problems he faced within UMNO especially on the need for funding. The accused indicated that he needed contribution to his political fund. The accused asked PW15 to assist him in matters relating to UMNO. What PW15 understood from this request was that the accused wanted financial assistance from UKSB. According to PW15, the accused never mentioned about the amount he wanted although he did say that the contribution should be made in cash and in Singapore dollars. Since the accused did not mention the amount he wanted, UKSB decided to give SGD200,000 per month. PW15, PW16 and PW17 figured out this amount themselves. They decided to pay on a monthly basis because they were not prepared to pay cash in one lump sum.

[84] PW15 further testified that as the person who controlled UKSB he had knowledge of payments to the accused. He confirmed that UKSB delivered cash monies to the accused from 2014 to 2018. PW15 said that he, together with PW16 and PW17 delivered cash to the accused on a monthly basis in Singapore dollars.

[85] The cash monies for the accused were prepared by PW17. Once the monies were prepared, PW17 would give PW15 an envelope containing the money and PW15 would then make the deliveries. Usually, the three of them namely PW16, PW17 and PW15 would go together to the accused house but the handing over of the envelope containing the monies was done by one person only. Whoever that was making the delivery would leave the envelope

containing the monies on a table in the room and he would also make sure that there was no one else in the room with the accused when the delivery was made.

[86] There were times when the monies were delivered by PW16 and PW17. These happened when PW15 was not able to go or when PW15 was out of the country. The delivery dates of the money were not fixed and the delivery would be done at the accused's convenience as he was a busy man. The delivery could take place on any date of the month as decided by the accused. The handing over of the monies would be done at his residence at night, usually after 10pm. Either one of the ie PW15 or PW16 would call the accused in advance before visiting. Both his private and official residences had security guards and policemen, but they would always be allowed enter without the need to report at the guard house.

[87] If the meeting took place at the Country Heights residence, they would have their discussion at the living room on the second level of the house. After the new wing of his private residence was completed the meeting would be held there.

[88] If the meeting was to be held at the Seri Satria residence, the meeting would take place in his private study. PW15 testified that meetings at the Seri Satria residence only took place from 2018 onwards as it was under renovation.

[89] PW15 further testified that if he recalled the payment of SGD200,000 per month began in late 2014 and continued up until mid 2015. Somewhere around that time, PW16 told PW15 that the accused wanted to see both of them. So they went to the Country Heights residence and in the meeting after the usual discussion about their business, the accused requested the monthly contribution to be increased. Again, the accused did not indicate the amount for the increase. After discussing with PW16 and PW17, they agreed for SGD300,000 per month.

[90] PW15 further testified somewhere in 2017, as he was again informed by PW16 that the accused requested to see both of them. PW15 and PW16 went to the Country Heights residence and in that meeting, after the usual discussion about the performance of their business, the accused requested that the contribution be increased due to the upcoming general election. After discussing with PW16 and PW17, they agreed to increase the amount of monthly payment to SGD520,000 per month. How they came out with this figure was because the accused had mentioned that the UMNO divisions needed financial support. In their discussion they agreed for a sum of roughly RM10,000 for the more than100 UMNO divisions and after conversion, the total sum came to SGD520,000 per month at the material time. On top of the monthly contribution, from time to time, UKSB had also sponsored the

accused's overseas trip(s), his wife's birthday celebration(s) and also Hari Raya celebration(s). There were also months that they did not meet the monthly payment but they would make up the payment for the following month so as to cover the month(s) that they missed.

[91] PW15 testified that as he could recalled roughly, for 'probably about 15 to 20 times' he delivered the monies to the accused. He thought in the entire process, around 70%–80% of deliveries were done by him but he could not recall the exact number of occasions. When asked further, PW15 replied 'plus minus 40 times'. Generally, he would deliver the monies together with PW16 and PW17.

[92] PW15 further testified he personally did not keep record about the deliveries but he knew PW17 kept some sort of a ledger on the a monthly payments of which PW17 would tell PW15 from time to time. PW15 confirmed that he has sighted PW17's ledger (P63 (1–52)) but he would not be able to explain the specific details in the ledger.

[93] PW15 also testified that although the payments were said to be political contribution, UKSB never made any payment into UMNO's account nor was UKSB issued any receipts or acknowledgement for the payments by UMNO. PW15 said that he handed the monies to the accused personally and not to any representative of the accused.

[94] PW15 also testified that UKSB contributed the funds to the accused because PW15 wanted to build and maintain a good relationship with the Government of the day in order to ensure the smooth running of the business. They were also other interested parties who aimed for the contract.

[95] PW15 estimated, after having being briefed by the board of directors of UKSB, approximately RM40m was given to the accused from 2014 to 2018. UKSB got the monies from their business associates in Hong Kong to pay the accused.

Evidence of PW16

[96] PW16 had delivered the monies to the accused on a few occasions but he could not recollect the exact dates of such deliveries.

[97] The amount delivered was approximately SGD300,000 on each occasion.

[98] And for those deliveries made by PW16, he would deliver the monies in an envelope on each occasion.

[99] No conversation between PW16 and the accused when the deliveries took place.

[100] PW16 entered the residence of the accused by a car driven by his driver. Only for the first time he had to register at the guardhouse and thereafter he did not have to register at the guardhouse.

[101] PW16 only had to inform the guard(s) of his visits to the accused.

[102] PW16 resigned as a director of UKSB on 17 August 2018.

[103] PW16 was not sure of the existence of the ledger (P63 (1–52)) prepared by PW17.

[104] PW16 was not informed of the existence of the ledger (P63 (1–52)) by PW17.

[105] PW16 did not know of the existence of the two money changers.

[106] PW16 did not know of the use of money changers to make payment to the accused.

[107] According to PW16, monies from Hong Kong that were used to be given to the accused were sent to Malaysia via an offshore company in Labuan.

[108] Form the conversation PW16 had with PW15 and PW17, the name of 'Nicole' was mentioned by PW15 and/or PW17 but PW16 did not know whether 'Nicole' was overseas and was not sure of her role in the subject matter.

[109] The control of the finances and cashflow of UKSB rested with PW15.

[110] PW16 agreed with the defence during cross-examination that no documentary evidence or other corroborative evidence such as deposit slips and CCTV footages were produced to support the fact that the monies were delivered to and received by the accused.

Evidence of PW17

[111] PW17 prepared the cash monies to be delivered to the accused on a monthly basis at the instructions of PW15.

[112] Whenever deliveries were to be made, all three of them ie PW15, 16 and 17 would go together the accused's residence. One of them would deliver the cash envelope to the accused.

[113] PW17 kept record of the monies delivered to the accused starting from October 2014 to August 2018 by way of the ledger (P63 (1–52)). When PW15 first put him in charge of preparing the cash monies, PW15 told him that the accused had requested for monetary 'contribution' from UKSB. PW17 recalled himself, PW15 and PW16 discussing about the accused' request. This took place on or around mid 2014 if he was not mistaken. It was during the discussion that PW16 became aware that accused had asked for cash in Singapore Dollar. In the discussion PW15, PW16 and PW17 talked about how best to make the payments.

[114] In that discussion, they all agreed in principal that it was in UKSB's best interest to give money to accused in order to secure UKSB's position as the sole contractor for the visa facilitation services. At that time, although UKSB had already secured the VLN contract in May 2014, they became aware that there were other companies attempting to take over the Visa project. It was their hope and belief that by giving money, the accused would treat UKSB more favourably.

[115] Also, in that discussion, the three of them agreed to give SGD200,000 on a monthly basis. They decided that payment should be made monthly because it would be too burdensome for UKSB to give one lump sum. As for PW17, his role was simply to make sure UKSB had sufficient funds to meet the accused's request.

[116] The first delivery of SGD200,000 was made in October 2014 and continued up until February 2015.

[117] Starting May 2015, the amount was increased to SGD300,000 per month. PW17 was informed by PW15 earlier that the accused had asked for more, they then decided to add another SGD100,000 to the monthly contribution making it a total of SGD300,000.

[118] In July 2017, again they increased to SGD520,000 per month. The three of them ie PW15, PW16 and PW17 had another discussion about the amount of contribution. During the said discussion, PW17 was informed by PW15 that the accused had asked for an increase. So, the three of them decided to raise the amount to SGD520,000 a month. This figure was based on PW16's estimation of the funds required for each UMNO division. If PW17 was not mistaken, PW16 said that there were about 190 UMNO divisions around the country. PW16 estimated about RM10,000 for each division totalling

RM1,900,000 per month. PW17 then calculated the conversion rate for Singapore Dollar at the material time, which came up to approximately SGD520,000.

[119] Normally, whenever it was time to make delivery, the three of them ie PW15, PW16 and PW17 would go together but only one of them would drop the cash envelope for the accused. Most of the time, it would be PW15 and if he was not around, it would then be either PW17 or PW16. PW17 had personally delivered the monies to the accused on a few occasions, either at the Country Heights or Seri Satria residences. Delivery was always done at night.

[120] In addition to the monthly payments, PW17 was asked by PW15 to prepare some cash to give to the accused for the UMNO General Assembly, Hari Raya, and his wife's birthday. These were one-off payments.

[121] Upon further examination, PW17 said that he personally delivered the monies on 2 occasions, all took place in the Seri Satria residence.

[122] In his witness statement in para 15, PW17 said 'I have personally delivered money to Dato' Sri on a few occasions, at his house in Country Heights and also to his official residence, Seri Satria in Putrajaya'.

[123] For the second delivery, PW17 recalled that the amount brought by him was RM3m in cash. He put the cash in luggage on a roller. Upon entering the Seri Satria residence, PW17 could not recall in which room did he leave the luggage containing the RM3m cash.

[124] According to the oral testimony of PW17: 'Actually, our business partner or sub-contractor is in Hong Kong they also decided to help us in terms of arrangement for political fund. So, usually I will get the money through the money changers bank account in Hong Kong and passed the contact person in Hong Kong. Then after that the shareholders of the companies in Hong Kong after receiving dividends from the company then they will bank in cash into the account provided by me. Once the funds clear the money changer in Malaysia they will the cash either in Ringgit Malaysia, Singapore Dollar or other currency to me'.

[125] The monies that were used for the monthly and one-off payments to the accused were not from UKSB's account. UKSB did not have enough funds to cover the payments, because of that, PW17 had to ask their business partners in Hong Kong to help them out.

[126] PW17 further testified that the funds from Hong Kong would be channelled into Malaysia through money-changers in Kuala Lumpur, and then passed on to him in cash. After receiving the cash, he would keep in the company safe box first, and when the time came for them to make the delivery, he would then take out the required amount and put it in a sealed envelope.

[127] PW17 also said that money changers would bring the monies to him once a week starting from October 2014 until 2018.

[128] The contact person in Hong Kong was one Nicole Tan.

[129] Upon cross-examination, PW17 agreed that the second delivery of RM3m in was important but failed to mention it in his witness statement. He also agreed that the witness statement did not mention about him bringing a luggage containing the RM3m cash monies even though these two were important details. He further agreed that the evidence of RM3m and bringing of the luggage were afterthoughts. His oral testimony is reproduced in verbatim as follows:

Question (Q): No mention about Labuan, correct?

Answer (A): Yes.

Q: Is an afterthought? You could mention, correct?

A: Correct.

Q: No mention about you bring the luggage to the house of Dato' Seri, correct?

A: Yes.

Q: No mention about 3 million in your statement correct?

A: Yes.

Q: Is important piece of evidence, important piece of information we like to share, correct?

A: Yes

Q: And yet no mention?

A: Yes.

Q: I put to you is an also afterthought? Agree don't agree?

A: Yes.

Ledger (P63 (1–52))

[130] PW17 testified that he was the creator of the ledger (P63) which he kept record of monies received from UKSB's partner(s) in Hong Kong and payments made.

[131] PW17 kept record of all payments made to the accused since 2014 to 2018. PW17 prepared the ledger in P63 using Microsoft Excel on his personal laptop. He said that he was not an accountant by training, so the ledger was just a simple record of money in and money out. It was actually for his personal record because the amount of cash involved was huge ie approximately RM240m.

[132] The main entries in the ledger were the amounts available for each month, the amount withdrawn, and the nickname of the intended receivers. The individuals named in the ledger include serving and former Cabinet ministers, politicians and government servants. Usually, PW17 would key in the entries daily but on some busy days, PW17 would write down on a piece of paper first before entering the details in the ledger on the following day.

[133] The ledger is filed under 'SU.xlsx' 'SU (2016) .xlsx' and 'SU(2017 II).xlsx'. All these files were stored in PW17's pen-drive 'RHB Imation 8GB'. PW17 had a back-up copy of the three files in another pen-drive named 'Transcend'. PW17 had one other pen-drive 'Apacer', but PW17 did not save the three Excel files in this pen-drive.

[134] All these files are password-protected; only PW17 had access to it. The password was 5252. PW17 had shown some of the files to PW15 once or twice but PW17 did not explain the entries in detail to PW15.

[135] On 12 October 2018, the MACC visited the UKSB office and seized PW17's laptop 'HP ProBook' together with the cable charger, and the three pen-drives.

[136] For better understanding of the ledger, a sample of P63 (4) of the ledger is produced as follows:

Exhibit P63 (4)

Summary: HL-Company (Dec-14)

As at: 12-Nov-18

Deposit

Date	Mode	To	Currency	Rate (RM)	Amount (FC)	Amount (RM)	Remarks
30 Dec 14	Cash	Nicole	SGD	2.660	441,024.00	1,173,123.84	Dec-14
	Cash	Nicole	RM			357,992.00	Dec-14
						1,531,115.84	

Less: Withdrawal

Date	Mode	To	Currency	Rate	Amount (FC)	Amount (RM)	Remarks
31 Dec 14	Cash	Badak	RMB	0.560	20,000.00	11,200.00	Suppose to W
	Cash	Badak	HKD	0.450	10,000.00	4,500.00	Suppose to W
5 Jan 15	Cash	HL	SGD	2.660	200,000.00	532,000.00	
6 Jan 15	Cash	HL	SGD	2.670	100,000.00	267,000.00	
Jan 15	Cash	Lawrence				3,500.00	Apec-Diana
	Cash					224.94	
	Cash	Adrian				20,000.00	Dec-15
	Cash	HL				50,000.00	
	Cash	Amy				80,000.00	
	Cash	Amy				20,000.00	W
	Cash	HL				20,00000	KP
	Cash	HL				5,000.00	Flood Donation
	Cash	Amy				1,000.00	Bonus-Safwan
	Cash	Amy				2,450.00	Bonus-Shahidan
	Cash	HL	SGD	2.690		379,357.25	
	Cash	HL				134,883.65	
		Total				1,531,115.84	

[137] There are two sections in the ledger namely the deposits and withdrawals sections. The deposits section showed various columns ie the date, mode, source, currency, exchange rate, amount of money received from Hong Kong and its equivalence in Ringgit Malaysia as well as the remark column. As for the withdrawal section, it showed the date, mode, recipient, currency, rate, amount and remark columns.

[138] Based on the evidence of PW15, PW16 and PW17, I find that the remark column is important as it kept record of the recipients of the monies. In other words, who actually received the money would be recorded in the 'remark' columns of the ledger (P63 (1–52)).

[139] Based on the above sample in P63(4), one would understand that the monies received from Nicole in Hong Kong by way of cash of was SGD441,024 or RM1,173,123.84 based on the then exchange rate of 2.66 and a further amount of RM357,992 totalling RM1,531,115.84 on 30 December 2014. And based on the withdrawal section, on 31 December 2014, 5 January 2015, 7 January 2017, 13 January 2015, payments in cash were made to Badak, HL, Lawrence, Adrian and Amy.

[140] Based on the sample ledger P63(4), PW17 said that he prepared the cash monies of SGD300,000 and put them in an envelope to the accused in January 2015 together with PW15 and PW16 at Country Heights residence. He also confirmed that the said monies were delivered to the accused through PW15. Likewise, PW15 said PW17 prepared the monies and put them in the envelope. PW15 entered the residence with PW16, and PW15 then placed the

envelope containing the monies on the table. The accused then arrived, after a short conversation, PW15 then left the room. As highlighted earlier, PW17 said he usually kept record of the payment on the same day and if he was busy, he would record it in a paper and update the ledger the next day. However, both PW15 and PW17 agreed that at the ledger P63(4) there was no notation indicating as to whom was the final recipient of the money in the 'remark' column. The 'remark' column was left blank. Both of them ie PW15 and PW17 agreed with the defence counsel that there was no notation that the money was actually delivered to the accused.

[141] During cross examination of PW17 by the defence counsel the following transpired:

> Q: For 5th January 2015, 6th January 2015 forthe amounts of 300,000 Singapore Dollar. Again, no notations whatsoever that this amount are paid to Dato' Seri. Correct?
>
> A : Correct.

[142] Based on the ledger adduced by the prosecution in court ie P63 (1–52), the entries of the ledger that were relevant to the accused in all charged as highlighted by the prosecution are reproduced as follows:

Exhibit P63 (1)

Date	Mode	To	Currency	Rate (RM)	Amount (FC)	Amount (RM)	Remarks
9 Oct 14		HL	SGD	2.570	50,000.00	128,500.00	
15 Oct 14		HL	SGD	2.580	143,728.00	370,818.24	
		HL	SGD	2.600	40,000.00	104,000.00	

Exhibit P63 (2)

Date	Mode	To	Currency	Rate (RM)	Amount (FC)	Amount (RM)	Remarks
31 Oct 14	Cash	HL	SGD	2.590	200,000.00	518,000.00	

Exhibit P63 (3)

Date	Mode	To	Currency	Rate (RM)	Amount (FC)	Amount (RM)	Remarks
4 Dec 14	Cash	HL	SGD	2.600	200,000.00	520,000.00	

Exhibit P63 (4)

Date	Mode	To	Currency	Rate (RM)	Amount (FC)	Amount (RM)	Remarks
5 Jan 15	Cash	HL	SGD	2.660	200,000.00	532,000.00	

Exhibit P63 (5)

Date	Mode	To	Currency	Rate (RM)	Amount (FC)	Amount (RM)	Remarks
3 Feb 15	Cash	HL	SGD	2.710	100,000.00	271,000.00	
5 Feb 15	Cash	HL	SGD	2.685	100,000.00	268,500.00	

Exhibit P63 (7)

Date	Mode	To	Currency	Rate (RM)	Amount (FC)	Amount (RM)	Remarks
1 Apr 15	Cash	HL	SGD	2.705	300,000.00	811,500.00	ZH- Mar 15
	Cash	HL	SGD	2.705	15, 800.00	42,739.00	Small A
	Cash	HL	SGD	2.705	275,000.00	744,493.91	ZH - Apr 15

Exhibit P63 (8)

Date	Mode	To	Currency	Rate (RM)	Amount (FC)	Amount (RM)	Remarks
	Cash	HL	SGD	2.725	300,000.00	817,500.00	May-15

Exhibit P63 (9)

Date	Mode	To	Currency	Rate (RM)	Amount (FC)	Amount (RM)	Remarks
	Cash	HL	SGD	2.820	300,000.00	846,000.00	Jun-15
	Cash	Z				125,000.00	Raya

Exhibit P63 (10)

Date	Mode	To	Currency	Rate (RM)	Amount (FC)	Amount (RM)	Remarks
	Cash	HL	SGD	2.820	300,000.00	846,000.00	Z- July 15
	Cash	Young Boy	SGD	2.930	120,000.00	351,600.00	-
	Cash	HL	SGD	3.020	300,000.00	906,000.00	Z - Aug15

Exhibit P63 (11)

Date	Mode	To	Currency	Rate (RM)	Amount (FC)	Amount (RM)	Remarks
	Cash	HL	SGD	3.060	100,000.00	306,000.00	YB- Aug 15
	Cash	HL	SGD	3.080	100,000.00	308,000.00	-
	Cash	HL	SGD	3.045	100,000.00	304,500.00	YB- Sept 15

Exhibit P63 (13)

Date	Mode	To	Currency	Rate (RM)	Amount (FC)	Amount (RM)	Remarks
	Cash	Monster	SGD	3.150	1,000,000.00	3,150,000.00	U71

A

Exhibit P63 (16)

Date	Mode	From	To	Currency	Rate (RM)	Amount (FC)	Amount (RM)	Remarks
	Cash		Monster	SGD	3.155	30,000.00	94,650.00	Birthday of wife

B

Exhibit P63 (17)

1 Mon (3,000,000.00) 27-Mac-18

C

Exhibit P63 (18)

Date	Mode	To	Currency	Rate (RM)	Amount (FC)	Amount (RM)	Remarks
	Cash	HL	SGD	3.085	100,000.00	308,500.00	YB-Oct 15
	Cash	HL	SGD	3.085	102,000.00	314,670.00	

D

Exhibit P63 (19)

Date	Mode	To	Currency	Rate (RM)	Amount (FC)	Amount (RM)	Remarks
	Cash	HL	SGD	3.080	220,000.00	677,600.00	Nov -15

E

Exhibit P63 (20)

Date	Mode	To	Currency	Rate (RM)	Amount (FC)	Amount (RM)	Remarks
	Cash	HL	SGD	3.070	283,000.00	868,810.00	

F

Exhibit P63 (21)

Date	Mode	To	Currency	Rate (RM)	Amount (FC)	Amount (RM)	Remarks
	Cash	YB	SGD	3.150	100,000.00	304,000.00	
	Cash	HL	SGD	3.030	172,000.00	521,160.00	

G

Exhibit P63 (23)

Date	Mode	To	Currency	Rate (RM)	Amount (FC)	Amount (RM)	Remarks
	Cash	HL	SGD	2.935	200,000.00	587,000.00	Mar-16
	Cash	YB	SGD	2.9200	300,000.00	876,000.00	Mar-16

H

I

Exhibit P63 (24)

Date	Mode	To	Currency	Rate (RM)	Amount (FC)	Amount (RM)	Remarks
	Cash	HL	SGD	2.9300	300,000.00	879,000.00	6/5 @ UOA
	Cash	HL	SGD	4.1800	15,000.00	62,700.00	YB
	Cash	HL	SGD	2.9750	500,000.00	1,487,500.00	

Exhibit P63 (26)

Date	Mode	To	Currency	Rate (RM)	Amount (FC)	Amount (RM)	Remarks
	Cash	HL	SGD	3.050	400,000.00	1,220,000.00	Jun-16
15-Jul-16	Cash	HL	SGD	3.020	100,000.00	302,000.00	
	Cash	YB	SGD	3.020	150,000.00	453,000.00	
	Cash	YB	SGD	4.020	15,000.00	60,300.00	

Exhibit P63 (27)

Date	Mode	To	Currency	Rate (RM)	Amount (FC)	Amount (RM)	Remarks
	Cash	HL	SGD	3.035	400,000.00	1,214,000.00	

Exhibit P63 (28)

Date	Mode	To	Currency	Rate (RM)	Amount (FC)	Amount (RM)	Remarks
	Cash	HL	SGD	3.04	800,000.00	2,428,000.00	

Exhibit P63 (29)

Date	Mode	To	Currency	Rate (RM)	Amount (FC)	Amount (RM)	Remarks
	Cash	HL	SGD	3.05	950,000.00	2,902,000.00	

Exhibit P63 (30)

Date	Mode	To	Currency	Rate (RM)	Amount (FC)	Amount (RM)	Remarks
	Cash	HL	SGD	3.05	1,200,000.00	3,659,300.00	

Exhibit P63 (31)

Date	Mode	To	Currency	Rate (RM)	Amount (FC)	Amount (RM)	Remarks
	Cash	HL	SGD	3.14	900,000.00	2,826,000.00	

A

Exhibit P63 (32)

Advanced 300,000.00 19/10/2017 Z @ CH

Date	Mode	To	Currency	Rate (RM)	Amount (FC)	Amount (RM)	Remarks
	Cash	HL	SGD	3.13	1,000,000.00	3,130,000.00	

B

Exhibit P63 (34)

Advanced 300,000.00 27/02/2017 Z @ CH

Date	Mode	To	Currency	Rate (RM)	Amount (FC)	Amount (RM)	Remarks
	Cash	HL	SGD	3.175	300,000.00	925,500.00	Monster

C

Exhibit P63 (35)

Advanced of SGD 300,000.00 28/03/2017 Z @ SS

Date	Mode	To	Currency	Rate (RM)	Amount (FC)	Amount (RM)	Remarks
	Cash	HL	SGD	3.186	900,000.00	2,867,700.00	

D

Exhibit P63 (36)

SG Paid 200,000.00 03/05/2017 H @ UOA

300,000.00 04/05/2017 Z @SS

E

Date	Mode	To	Currency	Rate (RM)	Amount (FC)	Amount (RM)	Remarks
5-Jun-17	Cash	HL	SGD	3.140	320,000.00	1,004,800.00	AF- 4th
	Cash	HL	SGD	3.140	300,000.00	942,000.00	Monster-May 17

F

Exhibit P63 (37)

SG Paid 300,000.00 Monster @ 5/6

300,000.00 Monster @ 15/6

G

Date	Mode	To	Currency	Rate (RM)	Amount (FC)	Amount (RM)	Remarks
	Cash	HL	SGD	3.140	300,000.00	942,000.00	Monster-May 17
	Cash	HL	SGD	3.140	300,000.00	942,000.00	Monster (June-17)

Exhibit P63 (38)

SG Paid 300,000.00 Monster @ 24/7

H

220,000.00 Monster @ 24/7

Date	Mode	To	Currency	Rate (RM)	Amount (FC)	Amount (RM)	Remarks
	Cash	HL	SGD	3.170	1,600,000.00	5,072,000.00	

I

Exhibit P63 (39)

SG Paid 300,000.00 4/9 @ SS

220,000.00 4/9 @ SS

Date	Mode	To	Currency	Rate (RM)	Amount (FC)	Amount (RM)	Remarks
	Cash	HL	SGD	3.170	500,000.00	1,585,000.00	17/8@UOA
	Cash	HL	SGD	3.170	300,000.00	951,000.00	Aug- 17

Exhibit P63 (40)

SG Paid 300,000.00 4/9 @ SS

220,000.00 4/9 @ SS

Date	Mode	To	Currency	Rate (RM)	Amount (FC)	Amount (RM)	Remarks
	Cash	Monster	SGD	3.165	300,000.00	949,500.00	23/9 @SS (Sept-17)

Exhibit P63 (42)

SG Paid 300,000.00 5/11 @ SS Oct-17

220,000.00 5/11 @ SS AF-9th

Date	Mode	To	Currency	Rate (RM)	Amount (FC)	Amount (RM)	Remarks
	Cash	HL	SGD	3.100	900,000.00	2,790,000.00	

Exhibit P63 (43)

SG Paid 300,000.00 27/11 @ SS Nov-17

220,000.00 27/11 @ SS AF-10th

Date	Mode	To	Currency	Rate (RM)	Amount (FC)	Amount (RM)	Remarks
	Cash	HL	SGD	3.080	1,000,000.00	3,080,000.00	

Exhibit P63 (44)

SG Paid 300,000.00 10/1 @ SS Dec-17

220,000.00 10/1 @ SS AF-11th

Date	Mode	To	Currency	Rate (RM)	Amount (FC)	Amount (RM)	Remarks
	Cash	HL	SGD	3.050	900,000.00	2,745,000.00	

Exhibit P63 (45)

SG Paid 300,000.00 SS @ 12/2 Jan-18

220,000.00 SS @ 12/2 AF-12th

Date	Mode	To	Currency	Rate (RM)	Amount (FC)	Amount (RM)	Remarks
	Cash	HL	SGD	3.040	1,400,000.00	4,408,000.00	

Exhibit P63 (46)

SG Paid 300,000.00 SS @ 2/3 Feb-18

220,000.00 SS @ 2/3 AF-13th

Date	Mode	To	Currency	Rate (RM)	Amount (FC)	Amount (RM)	Remarks
	Cash	HL	SGD	3.020	800,000.00	2,416,000.00	

Exhibit P63 (47)

SG Paid 300,000.00 SS @ 2/6/18 Mar-18

220,000.00 SS @ 2/6/18 AF-14th

Date	Mode	To	Currency	Rate (RM)	Amount (FC)	Amount (RM)	Remarks
	Cash	HL	SGD	3.020	1,600,000.00	4,832,000.00	

Exhibit P63 (48)

SG Paid 300,000.00 AK @ 19/6/18 Apr-18

220,000.00 AK @ 19/6/18 AF-15th

Date	Mode	To	Currency	Rate (RM)	Amount (FC)	Amount (RM)	Remarks
	Cash	HL	SGD	3.035	1,750,000.00	5,311, 250.00	

Exhibit P63 (49)

SG Paid 300,000.00 RC @ 2/7/18 May-18

220,000.00 RC @ 2/7/18 AF-16th

Date	Mode	To	Currency	Rate (RM)	Amount (FC)	Amount (RM)	Remarks
	Cash	HL	SGD	3.035	1,500,000.00	4,552,500.00	

Exhibit P63 (50)

SG Paid 300,000.00 25/7 @ HL (APW) Jun-18

220,000.00 25/7 @ HL(APW) AF-17th

Date	Mode	To	Currency	Rate (RM)	Amount (FC)	Amount (RM)	Remarks
	Cash	Monster	SGD	3.030	320,000.00	969,600.00	AF-18th
	Cash	HL	SGD	3.030	300,000.00	909,000.00	

Exhibit P63 (51)

SG Paid 300,000.00 RC @ 14/8 Jul-18

220,000.00 RC @ 14/8 AF-18h

Date	Mode	To	Currency	Rate (RM)	Amount (FC)	Amount (RM)	Remarks
	Cash	Monster	SGD	3.030	320,000.00	969,600.00	AF-19th

Exhibit P63 (52)

SG Paid 300,000.00 AK @ 17/9 Aug-18

220,000.00 AK @ 30/9 AF-19th

Date	Mode	To	Currency	Rate (RM)	Amount (FC)	Amount (RM)	Remarks
	Cash	Monster	SGD	3.060	320,000.00	979,200.00	AF-20th

[143] Based on the above ledger (P63(1–52)), I make the following observations:

(a) there are 21 pages out of 52 pages with no notation at the 'remark' column. Despite the absence of notation at the 'remark' column, PW17 testified that the monies were given to the accused based on those entries in the said 21 pages. However, when referred these 21 pages during cross-examination, PW15 confirmed that he did not know whether these payments appearing on the said 21 pages in the ledger were in fact paid to the accused. PW15 testified that the 'remark' column did not indicate the identity of the recipients, further there was no notation as to whom received the monies, there was also nothing to show or support the allegation that the monies were paid to the accused. The said 21 pages of the ledger referred by me are as follows: (P63 (1), (2), (3), (4), (5), (17), (20), (21), (27), (28), (29), (30), (31), (32), (33), (35), (38), (42), (43), (44) and (45));

(b) there are eight pages out of 52 pages ie (P63 (6), (12), (14), (15), (22), (25), (33), (41)) that were not related to any alleged payments to the accused as the entries on these eight pages did not show any payments to the accused;

(c) I further observe that on one hand PW15 testified that he had resigned as a director of UKSB on 31 January 2018 before the 14th General

Election. On the other hand, pages 46 until 52 of the ledger showed that PW15 was still involved in making cash payments even after his resignation in January 2018. (P63 (46), (47), (48), (49), (50), (51), and (52)). Question arises as to how could PW15 still involved in the making of payments after he has resigned. This was not explained by the prosecution;

(d) at p 13 of the ledger, it was recorded at the 'remark' column 'U71'. PW17 agreed thatU71 was neither Country Heights nor Seri Satria residence. Refer to P63(13);

(e) at p 24, it was recorded at the 'remark' column: 6/5 @UOA. Further at p 39, it was recorded in the 'remark' column as 17/8 @UOA. PW17 also agreed that 'UOA' is not the residence of the accused, it was neither the Country Heights nor Seri Satria residences. From the record it has been shown that 'UOA' refers to the office of UKSB. (P63 (24), (39));

(f) at pp 8, 9, 17,19, 23, 26, 39, 40 of the ledger, there were dates recorded in the 'remark' column. For instance, (P63 (8 — May 18), (9 — June 15), (17 — 27 March 18), (19 — November 15), (23 — March 16), (26 — Jun 16), (39 — August 17) and (40 — 23/9 @SS (September 17)). PW15 agreed that the notations in these columns showed that the accused was not the recipient;

(g) again at pp 11, 18 and 24 of the ledger, there is notation at the 'remark' column: 'YB' (P63 (11 — YB-Aug 15 and YB-Sept 15), (18 — YB-Oct 15), the notation 'YB' also appears at the column 'TO' at pages P63(23), P63 (26). Based on these entries, PW15 agreed that the notation 'YB' did not show that the accused was the recipient;

(h) further at p 34 of the ledger, there is notation at the 'remark' column: 'Monster'. I refer to pages of the ledger: (P63 (34)), P63(36-Monster — May 17), P63 (37 — Monster May 17 and Monster (June — 17)). PW15 also agreed that 'Monster' did not refer to the accused as the recipient; and

(i) at p 10 of the ledger, there is notation at the 'remark' column: 'Z' (P63 (10 — Z-July 15 and Z — Aug 15). Again at p 7 of the ledger, there is notation at the 'remark' column: 'ZH'. (P63 (7 — ZH-Mar 15 and ZH — Apr 15). Further at p 9 of the ledger, there is notation at the 'To column: 'Z'. It then gives rise to the question whether these references ie 'Z' and 'ZH' are sufficient to link the accused to the offences charged. I will deliberate on this issue later.

[144] Based on the above particulars of the ledger highlighted by me, the Prosecution contended that PW17 was able to explain the abbreviations he used and, inter alia, 'CH' in the ledger means that the cash monies were delivered to the Country Heights residence, whilst 'SS' in the ledger indicates

the cash monies were delivered to the Seri Satria residence after the accused became the Deputy Prime Minister. I will also address this point later.

[145] It is noted that the last transaction according to the charges was on 27 March 2018 whereas p 47 of the ledger shows that the last transaction to the accused was in June 2018. Question arises as to why the accused was not charged for the transactions between April 2018 to June 2018.

[146] Apart from one Nicole Tan, it would appear that based on the 'deposit' section of the ledger, monies were also received from 15 other parties ie DLS, Jalan Tim, G44, PW15, G13, UKSB, YPSL, FT92, NT, SHH, G15, F92, Broad Gate Estate, OL&AK@4/6 and FM. It was never explained or clarified by any of the Prosecution witnesses as to whom these 15 parties were and how they were involved in the subject matter.

[147] I further find that the prosecution witnesses did not provide an in-detail explanation on the identity of Nicole. PW16 did not know who Nicole was. PW17 however said that Nicole was a Hong Kong citizen working with the Hong Kong subcontractor who delivered the monies to PW17. PW15 however claimed that Nicole was an employee of PW14.

[148] Based on the oral testimony of the key prosecution witnesses, I find that Nicole was instrumental to explain the nature of arrangement or agreement between UKSB and herself or the Hong Kong subcontractor as she was the one providing most of the funds from the RM238,356,966.60 in total as specified in the ledger (P63 (1–52)). From the ledger and the evidence of PW15, PW16 and PW17 it appears that PW15 was in control of all the payments to various third parties including serving and former Cabinet ministers, serving and retired government servants and other individuals. Some individuals received millions from PW15. But no explanation was provided by any of the prosecution witnesses as to why those payments were made. Therefore, Nicole was important to clarify the missing link. Nicole, if called, would then be able to confirm or verify the evidence of PW17 that he received cash monies on a weekly basis from the two money changers whom received monies from Hong Kong. This is so especially given that PW16 testified that he did not know of the existence of any money changer. The witnesses from Hong Kong including Nicole would be able to provide an explanation on the actual source of funds especially given that all three key prosecution witnesses ie PW15, 16 and 17 confirmed that the source of the monies paid to the accused did not originate from UKSB. In short the source of fund was not explained.

[149] I further observe that PW17 in his evidence said that the accused was given various codenames in the ledger ie 'Z', 'ZH', 'YB', 'yb', and 'Monster'. However, other recipients were only given 1 codename for each of them.

Question also arises as to why the accused was given multiple codenames and the explanation by PW17 was improbable ie just because PW17 was eating Maggi instant noodle, and the picture of 'monster' appeared on the Maggi packet, the accused was given the codename 'monster'.

[150] Having considered the evidence in totality adduced before this court by the Prosecution through the oral testimony of PW15, PW16 and PW17 as well as the ledger produced in court, it is of utmost importance for me to assess whether these were credible evidence. The Federal Court in *Dato' Seri Anwar bin Ibrahim v Public Prosecutor and another appeal* [2015] 2 MLJ 293; [2015] 2 CLJ 145 laid down the principles in accepting or rejecting an evidence, inter alia, as follows:

(a) how it stands the test of cross examination and how far it fits in with the rest of the evidence and the circumstances of the case;

(b) the inherent probability of a fact in issue must be the prime consideration; and

(c) the evidence should not be rejected merely based on minor discrepancies unless in the case of major discrepancies ie whether the existence of certain discrepancies is sufficient to destroy their credibility.

[151] Guided by the Federal Court decision in *Anwar bin Ibrahim* and the evidence led by the prosecution before this court, I make the following findings:

(a) PW14 said that he did not know of the existence of the ledger and the payments stated in the ledger despite being in control of the administrative, finances and the operational matters of UKSB. However, PW14 knew that the UKSB entitlement of RM7.50 for each visa and the revenue collected from Hong Kong which were credited to the UKSB bank accounts as shown in the audited accounts (D56 to D61). From PW14's evidence, two inferences can be drawn and they are as follows. Either he was an untruthful witness who did not disclose the truth in court or no payment was in fact made to the accused if his evidence were to be accepted. The law is trite in this regard, the most favourable one to the accused must be chosen by the court;

(b) the evidence of PW15 reveals that he made 40 deliveries of cash monies to the accused. PW16 however said he made deliveries on a few occasions whereas PW17 said he delivered on two other occasions. Therefore, if the evidence of PW16 and PW17 were to be accepted, it would mean there were more than 42 deliveries, thus being in clear contradiction with the evidence of PW15 and the charges preferred that there were only 42 transaction ie 42 deliveries;

(c) on the issue of deliveries, PW15 was appointed by UKSB to specifically deal with the politicians in order to secure government contracts. Evidence shows that it was PW16 who introduced and brought PW15 to the accused at his residence. PW16 also had a close relationship with the family members of the accused, PW16 even performed Umrah together with the accused's family. It is therefore not unreasonable for me to find that PW16 who was very close to the accused would have made more deliveries compared to PW15;

(d) all three key witnesses called by the prosecution ie PW15, PW16 and PW17 testified that all cash monies were placed in a brown envelope on each occasion of deliveries. Initially, the monthly amount was SGD200,000 but was subsequently increased to SGD300,000 and finally SGD520,000. For months of default, the amount would then be doubled up for the following months. For instance, if they did not pay on January, the amount will be paid together in February. Again, they were all placed in an envelope. In comparison to the facts in *Public Prosecutor v Rosmah bt Mansor* [2022] 11 MLJ 801, in that case the first delivery of RM5m in cash on 20 December 2016 was split into two bags of RM2.5m each. For the second delivery of RM1.5m, the monies were put into two knapsacks. In the present case, the prosecution did not produce any sample envelope. No evidence was led to show the size of the envelope used. I simply cannot imagine what envelope in what size could fit the SGD600,000 in cash which was equivalent to around RM1.6m at the material time. Surprisingly, PW17, the creator of the ledger admitted during cross examination that the second delivery of RM3m in cash by way of a luggage was an afterthought. This admission of afterthought by the key prosecution witness ie PW17 is more than sufficient for me to find that PW17 was with zero credibility. To further support my finding, PW17 on one hand testified that he would record the payments on the same day or the next day of payment, however it has been shown that most of the 'remark' columns in the ledger were left blank. PW15 further agreed that the blank 'remark' columns do not show that the monies were paid to the accused. The blank 'remark' columns give rise to a possible inference as suggested by the defence that the monies could have been distributed among the three of them ie PW15, PW16 and PW17 as they maintained a luxurious lifestyle. Each of PW15, PW16 and PW17 had one unit of property in Pavilion, PW16 also owned one bungalow house in Putrajaya, one semi-detached house in Cyberjaya, two Range Rovers, expensive motorcycles and tax payment millions. Without strong evidential support, I simply cannot consciously make a finding that the monies were in fact received by the accused as suggested by the prosecution based on transactions recorded in the ledger with no record that the monies were in fact received by the accused in the 'remark' columns;

(e) PW15 and PW16 agreed that there was no independent evidence to support the contention that the monies were in fact paid to the accused. Based on all the evidence adduced by the prosecution, I observe as follows. No CCTV footages were produced in court, the driver(s) were not called, the guard(s) were not called, the policeman were not called, Touch and Go transaction slips were not produced, the phone call logs and messages with the accused also were not produced; and

(f) in comparison, in *Rosmah*'s case for the first payment of RM5m, Saidi's friend Razak who accompanied Saidi to Maybank Medan Tuanku branch was called as witness. The cheque dated 20 December 2016 was produced. Low Ai Lin, the assistant manager and Azimah bt Aziz, the Chief Cashier where Saidi cashed out the monies were all called as witnesses. Dato' Ahmed Farriq bin Zainul Abidin, a Rizal's friend who subsequently followed Rizal with the 2 bags of cash to Lawrence's office in Pavilion was also called as witness. When Rizal met the accused ie Rosmah, Rosmah asked him how much to which Rizal replied 'Lima (Five)'. These circumstantial evidence as highlighted in Rosmah's case were all absent in the present case. In the present case, those witnesses involved or had knowledge on the source of funds ie Nicole, two money changers were questioned and their statements were recorded but not called as witnesses to support the prosecution case. Likewise in Rosmah's case, witnesses were brought to Rosmah's residence and shown the living room where the two knapsacks were placed and where the accused, Saidi and Rayyan were seated. Photographs were taken and sketch plan was made but not in the present case.

[152] The amount of monies received based on the ledger in P63 (1–52) from September 2004 until August 2018 was about RM238,356,966. From the evidence of PW15, PW16 and PW17 it shows that PW15 was the one who controlled and made decisions over the funds, and made payments to various parties. Further, these monies were not reported to the tax authorities, never reported to the external and internal auditors of UKSB. These monies were are not reflected in audited accounts of UKSB. I find that there is sufficient evidence to show that criminal offences have been committed.

[153] In order to establish a prima facie case, the court has to assess the credibility and reliability of the witnesses (see *Balachandran v Public Prosecutor*, *Mohamad Radhi bin Yaakob v Public Prosecutor* [1991] 3 MLJ 169). Based on the foregoing reasons, I find that the three key witnesses called by the Prosecution ie PW15, PW16 and PW17 were not reliable and neither were they trustworthy or credible. The above reasons are answers as to why I find that the notations of 'Z' and 'ZH' that appear in the ledger (P63) are not sufficient to prove that the accused in fact received the monies and/ or gratification. I further find that even though there was suggestion that the

accused had received political donation amounting to RM200,000 on two occasions, there is no sufficient evidence of particulars before the court for me to come up with any amended charge(s).

[154] In conclusion I am of the considered opinion that the prosecution had failed to prove the main ingredient of the offence under all 33 main charges that the accused had received gratification in the context of the s 16(a)(B) MACC Act as specified in the charges.

[155] In respect of the 33 alternative charges under s 165 of the Penal Code, except the part where the accused was a public servant which was not disputed by the defence, I find that the prosecution had failed to prove the main ingredient of the offence ie receipt of monies without consideration based on my analysis of the evidence above.

SEVEN ALTERNATIVE CHARGES UNDER S 165 OF THE PENAL CODE

[156] In relation to the seven alternative charges under s 165 of the Penal Code which involved one-off payments to the accused, I find that the evidence of PW15, PW16 and PW17 and the ledger had failed to prove the element of receipt of cash monies by the accused. There is no need for me to repeat my analysis as to why I choose to reject the evidence of the said three key witnesses called by the prosecution. The same reasons above apply to the seven alternative charges under s 165 of the Penal Code and the two additional amended charges.

Whether the statutory presumption of s 50 (1) and (3) MACC act is applicable?

[157] It is trite that before a statutory presumption pursuant to s 50(1) and (3) of the MACC Act can be invoked, the prosecution must prove the primary fact that the accused in fact received the cash monies in the present case. On the ground that I have made a affirmative finding that the Prosecution had failed to prove the element of receipt for offences under s 16(a)(B) MACC Act as well as s 165 of the Penal Code, therefore the statutory presumption under sub-s 50(1) and (3) are not applicable and cannot be invoked in law and fact against the accused in the present case.

Evidence of accomplice

[158] Subsection 52(1)(a)(ii) of the MACC Act which provides that a giver cannot be presumed to be the accomplice has also be taken into account by me in arriving at the findings above. Based on my finding that the key prosecution witnesses ie PW15, PW16 and PW17 were not credible witnesses, there is no

necessity for me to consider whether the three key prosecution witnesses were accomplices in the present case.

Whether the charges framed by the prosecution were defective

[159] The prosecution in its opening speech at para 3 said that the prosecution would adduce evidence to prove that the accused had received monies from UKSB as in the charges. However, upon production of the audited accounts by the defence in exhs D56–D61 for the financial period of 2014 until 2018, the three key prosecution witnesses ie PW15, PW16 and PW17 altered their evidence. In their written witness statements they said that the monies given to the accused were from UKSB. However, later they changed their evidence by saying that the monies given to the accused were from the UKSB partner in Hong Kong.

[160] In all charges preferred against the accused, it must be noted that there was no mention of the representative of UKSB who had given the monies to the accused. Section 153(1) of the Criminal Procedure Code provides as follows:

> 153 Particulars as to time, place and person
>
> (1) The charge shall contain such particulars as to the time and place of the alleged offence and the person, if any, against whom or the thing, if any, in respect of which it was committed as are reasonably sufficient to give the accused notice of the matter which he is charged.

[161] I am of the considered view that s 153 of the CPC required the Prosecution to provide the particulars as to the identity of the persons who delivered the monies to the accused in all the charges.

[162] Having considered the evidence led by the prosecution in totality and in great detail, and given that I have rejected the evidence of the key prosecution witnesses ie PW15, PW16 and PW17 for want of credibility and reliability, there are unsolved and unanswered doubts as to whether the monies ever existed and whom delivered the monies to the accused.

[163] Based on s 153 of the CPC read together with s 16(a)(B) of the MACC Act and s 165 of the Penal Code, I am of the view that the particulars of the persons who made the deliveries of the cash monies ought to be specified in all charges to give the accused sufficient notice of the offence alleged as per the charges. The absence of such important details as to whom delivered the cash monies to the accused amounts to a serious prejudice of the accused' rights in preparation of his defence. Thus, the absence of such particulars are fatal and renders the charges against the accused defective.

Weight to be attached to the ledger (P63 (1)–(52))

[164] The Defence contended that the ledger should be rejected in totality because both PW17 and PW18 claimed that they printed out the ledger. In this regard, question arises as to whom actually printed out the ledger. Further, the certificate under s 90A(2) of the Evidence Act 1950 was not produced by the prosecution.

[165] Supported by the evidence led by the prosecution, I find that PW17 was the maker of the ledger. The defence did not dispute that the contents of the ledger which were shown in open court were the same as P63 (1–52). The defence relied heavily on the contents of the ledger to test the credibility and reliability of the key prosecution witnesses ie PW15, PW16and PW17.

[166] In short s 41A of the MACC Act is the answer to the challenge of the admissibility of the ledger by the defence. Section 41A provides as follows:

> 41A Admissibility of documentary evidence
>
> Where any document or a copy of any document is obtained by the Commission under this Act, such document shall be admissible in evidence in any proceedings under this Act, notwithstanding anything to the contrary in any other written law.

[167] As to the weightage to be given to the ledger, consistent with my earlier findings that the evidence of the key prosecution witnesses, PW15, PW16 and PW17 were not credible, not trustworthy, not believable and not reliable whom based their evidence heavily on the ledger, I therefore find that there should be no weightage given to the ledger.

DECISION

[168] In view of the failure by the prosecution to prove the foremost important element in all charges levelled against the accused ie the receipt of the corrupt monies; upon exercise of the maximum evaluation of the evidence in totality I find that the prosecution has failed to make out a prima facie case on all charges.

[169] On this occasion I would like to extend my appreciation to both parties who have shown their utmost professionalism in conducting the trial. I am delighted to preside in this case with the prosecution being led by Dato' Raja Rozela bt Raja Toran with the assistance of Dato' Wan Shaharudin bin Wan Ladin, Tuan Abdul Malik bin Ayob, Tuan Zander Lim Wai Keong and Puan Thavani a/p Balakrishnan and the defence counsel led by Datuk Haji Hisham Teh Poh Tek, Dato' Ahmad Zaidi bin Zainal, En Hamidi bin Dato' Mohd Noh, En Aiman bin Abdul Rahman, Pn Fatini Athirah bt Baharin, Cik

Sharifah Annafiza Al-Shahab bt Syed Fadzil, Cik Khairunnisa Sabirah bt Abdul Manan and Cik Noor Syamira bt Mohd Sabrizaa (PDK).

[170] Based on my observation, the trial proceeded smoothly without any vexatious and frivolous interlocutory applications. All learned deputies and the defence counsel have been exemplary in discharging their primary duty as officers of the court which is to assist the court in doing justice. I am grateful for that.

[171] In passing, I remind myself, that I have arrived at this decision of the court after having carefully considered and assessed the evidence led and adduced by the prosecution in totality as well as the submissions of both parties again and again. I myself certainly have refrained from Day 1 to be swayed or influenced by any comments of the public made outside of this courtroom. It was my solemn duty to uphold justice without favour and fear or prejudice. I am also reminded of the sanctity of the oath I took as a judge to decide based on evidence and to defend the Federal Constitution.

[172] Based on the foregoing reasons and analysis of the evidence and the law, it has now come for me to pronounce my judgment in this case. I hereby acquit and discharge the accused from all charges without calling for his defence as the prosecution has failed to made out a prima facie case.

Accused acquitted and discharged.

Reported by Ahmad Ismail